THE NATIONAL ADMINISTRATION OF THE UNITED STATES OF AMERICA


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BY

JOHN A. FAIRLIE, PH.D.

ASSISTANT PROFESSOR OF ADMINISTRATIVE LAW
UNIVERSITY OF MICHIGAN

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PREFACE

It is somewhat surprising that there has not been published long ago a comprehensive and systematic work on American national administration, but it must be acknowledged that with all that has been written on our governmental system this part of it has been hitherto almost entirely neglected, except in fugitive and scattered articles on particular phases of the subject. For a long time books on American government dealt only with the Constitution and its judicial interpretation, with special reference to the powers of Congress. Since Mr. Bryce's enlightening work appeared attention has been given to methods of legislative procedure and the influence of parties and party machinery. But the administrative organization and activities of the government have still been hardly mentioned in most works of a general nature.

At the same time the importance of administrative questions is evidenced by the attention given to them in public discussions, in current periodicals and in the volumes that have been published on many special topics. It may indeed be safely asserted that the problems of administration are the important problems of the present; and that they receive the attention which in earlier times was given to problems of constitutional organization. In view of these facts there seems to be a place for a general survey of the whole field of national administration which is presented in this book.

A glance at the table of contents will indicate more definitely the scope of the work. It will be seen that it is not an account of the national government as a whole, but simply of the administrative system. The legislative and judicial branches are

mentioned only in their direct relations to the executive administration.

Such a study should be of service not only for itself, but also as a model, to some extent at least, for State and local administration. For, with its defects, the national administration presents an organized system, where responsibility can be fixed and a fair degree of efficiency secured; and contrasts sharply with the disorganized and heterogeneous mass of administrative officials in our states, cities and other local districts. And it may be hoped that an orderly presentation of the national system may have some influence in securing a degree of organization where there is now little but chaos.

In the main the book has been written from the primary official records: the Constitution of the United States, the statutes of Congress, administrative reports and judicial decisions. But I have not hesitated to make use also of statements from unofficial sources written by those who have had opportunity for more thorough observation and investigation in particular branches of the administrative service than is possible for any one person covering so wide a field. And in many matters I have been able to rely on personal acquaintance with the administration in action.

References at the beginning of each chapter furnish a select bibliography, covering the most valuable and accessible printed material bearing directly on the subjects here considered. These, however, do not include references to all of the original statutes or to the periodical reports of the various departments and bureaus. Additional information may be discovered scattered through the treatises on American history, government and law, and in the volumes of judicial reports of the United States courts. Finally, for a complete study of the national administration, there is a vast accumulation of unpublished records in the archives of the various government offices. An account of these unpublished records and their location has recently been prepared in the *Guide to the Archives of the Government of the United States in Washington,* by Claude Hal-

stead Van Tyne and Waldo Gifford Leland, published by the Carnegie Institution.

Chapters I and II, on the President, have been previously published, in practically their present form, in the *Michigan Law Review* for December, 1903, and January, 1904.

ANN ARBOR, Mich.,
December 1, 1904.

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NATIONAL ADMINISTRATION

CHAPTER I

The President—I

References.—Pomeroy: Constitutional Law, 114-118, 531-612.—Burgess: Political Science, II, 216-263.—Von Holst: Constitutional Law, 82-90, 190-211.—The Federalist: Nos. 67-77.—Goodnow: Comparative Administrative Law, I, 59-74.—B. Harrison: This Country of Ours, 68-180.—James Bryce: The American Commonwealth, I, 38-85.—S. G. Fisher: The Trial of the Constitution, 202-268.—Grover Cleveland: Presidential Problems.—L. M. Salmon: History of the Appointing Power.—G. N. Lieber: Remarks on the Army Regulations; Use of the Army in Aid of the Civil Power.—*Atlantic Monthly:* 55:826; 85:721; 86:1.—*North American Review:* 133:464; 144:120, 261.—*American Law Review:* 31:876.—*Political Science Quarterly:* 1:163, 533; 3:345.—*American Historical Association,* Report for 1899:65-87.

At the head of the national administration stands the President of the United States. He is elected for a term of four years by an indirect process, nominally through a series of electoral colleges chosen in the different states, in fact as the result of a party contest where the original voters express directly their preference among the candidates, but where the result depends on the system of counting electoral votes, which may give a dominant and excessive influence to a small majority in a few pivotal states. It is not necessary here to discuss in detail the method of election. For, while the formal process is prescribed at some length in the national constitution, the most important features form no part of the national administration, but are regulated by state laws and extra legal political customs.

As this work deals only with the national administration, it

will not consider the entire scope of presidential authority. Those constitutional powers by virtue of which the President may exercise some control over the meetings of Congress and over congressional legislation are omitted as legislative in character; and the discussion is confined to his powers of an administrative nature.

In the early days of the national government, these administrative powers were of less importance than his legislative powers. This was due in part to the insignificance of the administrative service, and in part to the lack of an effective system of control over the service that was in existence. The same situation had existed in the colonies and in the states before the adoption of the national constitution; and it has persisted to a large extent until the present time in the state governments. But in the national government the course of events during the last hundred years has enormously increased the scope and value of the administrative powers of the President. Not only has the national administrative service developed far beyond anything imagined in 1789; but at the same time the methods of presidential control over that service have become more clearly recognized, and the means of enforcing that control have been made more and more effective.

The various administrative powers of the President may be considered in two main divisions: On the one hand he has certain general powers over all branches of the national administration; and on the other hand, he has more specific and additional authority over some particular branches of administration. In the first group are included his control over the personnel of the administrative services, through his powers of appointment and removal; and his authority over the activity of the administrative officers and agents, based on his constitutional power to take care that the laws are faithfully executed, and exercised by the issue of directions and executive regulations. In the second group are included the special authority conferred by the constitutional provisions in reference to foreign relations, the command of the army and navy,

and the power of pardon. Each of the administrative powers will be considered in turn.

GENERAL ADMINISTRATIVE POWERS

Power of Appointment.—The constitution of the United States provides that the President

"Shall nominate, and by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers, and consuls, judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law. But the Congress may, by law, vest the appointment of such inferior officers as they think proper in the President alone, in the courts of law, or in the heads of departments. The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session."

In other clauses, the constitution provides for the election of President, Vice-President, presidential electors, members of the Senate, and members of the House of Representatives. It also gives to each house of Congress the exclusive power to choose its own officers. These positions are, therefore, exempted from the presidential power and entirely beyond his control. The offices to be filled by the President must in most cases be created by law of Congress. Even in the case of the Supreme Court, which is specifically established by the constitution, the number of judges is left to be determined by Congress. In laws creating offices, Congress may, and usually does, fix the length of term (except for the judiciary), and the compensation, allots the powers and duties, and prescribes general conditions. It also decides whether appointments are to be made by the President and Senate, or by the President alone, the courts of law, or the heads of the departments. But in no case can Congress itself take any positive step towards filling an office except those connected with its own organization, nor can it confer the power of appointment upon any one not mentioned in the constitution.[1]

[1] United States *v.* Germain, 99 U. S. 508.

What class of positions come within the term "inferior officers" has never been carefully defined, and probably cannot be determined with exactness.[1] The question has never become serious because Congress has shown no tendency to prescribe any of the alternative methods of appointment, except for distinctly subordinate positions. Thus, not only the heads of the great departments, but also the heads of bureaus and important local officers—such as revenue collectors and postmasters in cities—are appointed by the President and Senate. The number of officers selected by this method has naturally shown a steady increase. In the time of Jefferson the number of presidential offices was about 400; at the inauguration of Jackson there were over 600; and when Lincoln became President the number was about 1,500. At the present time there are more than 6,000 presidential offices in the civil service, with an aggregate salary of $12,000,000 a year.[2]

Moreover, the great bulk of these presidential offices hold only for four-year terms, and are thus automatically vacated for new appointments during each presidential term. This system of four-year terms was introduced by the Tenure of Office Act of 1820, which prescribed this period for district attorneys, collectors of customs, and other financial officials. In 1836 the short-term rule was extended by statute to the more important postmasters. And at the present time the four-year period is in practice almost universal, since where it is not applied by statute, it is recognized by the custom of resignations, or may be enforced by the exercise of the power of removal.

[1] Collins *v.* U. S. 14 Ct. of Claims, 569.

[2] See summary in Forum, Vol. 31, p. 25:

State Department,	318	offices,	aggregating.....	$ 1,000,000
Treasury "	743	"	"	617,355
Post Office "	4,015	"	"	6,931,000
Interior "	747	"	"	1,997,640
Judiciary,			"	1,126,000
				$11,671,995

In exercising this enormous power of patronage, the President is not limited by any legal requirements, established either by statute or by standing executive regulations, governing the qualifications of candidates. The civil service examination system, governing the selection of candidates for subordinate and technical posts, does not affect the positions filled by the appointment of the President and Senate. Indeed, statutory qualifications would probably be considered an infringement on the constitutional grant of the appointing power; and some have professed to believe that even executive regulations could not be applied to positions of this kind.

The President's power of appointment is, however, restricted by the participation of the Senate; and to comprehend the significance of the President's authority it is necessary to examine the influence exercised by the Senate. Some of the opponents of the constitution feared that the President, through his power of nomination, would have full control over appointments; and that an ambitious man, supported by his own appointees in office, might retain possession of the Presidency after the expiration of his term.[1] The friends of the constitution argued that the power of the Senate would act as a restraint on the President; but at the same time they believed that the power of nomination would place the primary responsibility on the President, and that this would tend to secure good appointments.

In the early days of the national government an attempt was made to limit the President's power over nominations. It was urged that the right of the Senate to advise appointments could only be accomplished by suggesting names to the President, from which he might make nominations, to which the Senate would have to consent before the definitive appointment could be made. This method, by giving the Senate the right of initiative and the power of ratification, would virtually have made the Senate the sole appointing power. This interpretation was so clearly contrary to the intent of the consti-

[1] Elliott's Debates, I, 379.

tution that it was never accepted, and the Senate collectively acts on appointments only after nominations have been submitted.

But, while the Senate as a body does not control nominations, the individual Senators have come to wield a large influence in this field, and in some cases almost dictate nominations for local positions. This influence of the individual Senators has developed through the custom of "senatorial courtesy," whereby the Senate will refuse to consent to a nomination which is opposed by a Senator from the state concerned, who belongs to the same party as the President, and this opposition is almost certain to develop if the recommendation of the Senator has not been accepted by the President. Thus, for local positions, it is often the case that the primary selection is made by the Senators, or for less important positions by members of the House of Representatives, and the President merely exercises a power to reject unfit persons. To a large extent some such procedure is an almost necessary result of the great number of positions now filled by presidential nomination. It is impossible for the President to have personal knowledge of the applicants for local offices; and since he must rely on some one else for advice, it is natural that he should give weight to the recommendations of the Senators and Representatives.[1]

For some positions, however, the President exercises a much larger personal control. The heads of the Executive departments, who form the Cabinet, are in most cases personal selections; and the Senate confirms nominations for these offices as a matter of course. And in making nominations for the more important offices, particularly in the diplomatic service, the President exercises a large degree of independent judgment. Probably the President makes personal selections for as many positions as it is possible for one man to make with due consideration.

At the same time it must be recognized that the custom of allowing the members of Congress to select local officers, gives

[1] Harrison, *This Country of Ours*, 109.

them a control over the administration not contemplated by the constitution, and far from satisfactory in practice; while the President's exclusive power over the formal nominations tends to induce the members of Congress to support legislative measures favored by the administration, in return for patronage favors. There is probably no specific agreement to trade votes for appointments; but the influence of existing customs certainly violates the spirit of the constitutional separation of powers.

To correct this misuse of the presidential appointing power is not an easy matter, which can be fully accomplished by promulgating a legal rule, either in the form of a statute or of an executive regulation. The positions affected are of a distinctly different character from those in the subordinate classified service now filled by means of competitive written examinations; and call for qualifications of business capacity which cannot be thoroughly tested by that method. A system of higher grade examinations based on a professional university course in law, economics and public administration, such as is followed in Germany, could undoubtedly be devised, and could be so adapted to American educational methods as to avoid any possible danger of the bureaucratic spirit. But even such a system could be perverted to partisan purposes so long as present notions as to the political nature of presidential appointments prevail. The fundamental change that must be made is the recognition and appreciation, both by the people at large and by the politicians, of the non-political character of the administrative offices.

Two suggestions may be made which, if adopted, would aid in emphasizing this non-political character of such offices and in reducing the scope of political patronage. If the four-year tenure law were replaced by the older system of appointment for indefinite terms, the patronage at the free disposal of any administration would be reduced to a fraction of what it now is. And if the appointment of local officers could be transferred from the President and Senate (both essentially polit-

ical organs) to the heads of the departments, who are more directly responsible for the efficient conduct of their respective departments, administrative qualifications would receive larger consideration than is now given them. Such a decentralization of the appointing power would not take from the President any control which he personally exercises; but would be simply a recognition that the number of appointments is far larger than the President can select in person, and would transfer the responsible power of appointment to an administrative officer, who would be less dependent on the advice of members of Congress. Not only would this action tend to better the character of the administrative service; but the reduction of congressional patronage would tend to eliminate a serious corrupting influence from the congressional elections.

It may be added that still further decentralization in appointments may become advisable in the future as a counterbalance to the growing centralization in legislation and the scope of the national administrative service. Certainly if the constitution should be amended to give Congress larger powers, there should at the same time be amendments providing for some decentralization of the national administration. This might be accomplished by giving the state governors the power of appointing local agents of the national government, a method that would secure the advantage of local knowledge and at the same time continue the method of appointments by an executive official.

None of these proposals is intended to suggest any limitation on the President's power of removal. That power, as will presently be seen, is what gives him the effective control over the whole administration which he should continue to hold. Moreover by separating the power of removal from the power of appointment for local offices, and reserving the removal power to the President, a further remedy is provided against the abuse of the appointing power for partisan or personal purposes.

Power of Removal.—The constitution provides for removal

from office by the process of impeachment and contains no other mention of the power of removal. Under the strictest construction of the constitution, it might be urged that there is, therefore, no other method than impeachment by which administrative officers could be removed.[1] But from the time the question was raised, it seems to have been admitted that there is a larger power of removing officers whose terms were not explicitly prescribed by the constitution. By whom such removals might be made was a question answered in different ways. There are three possible alternatives: it might be a power vesting in the President alone; it might vest in the President with the advice and consent of the Senate; Congress might have the right to designate who should exercise the power.

In the first Congress the matter was thoroughly discussed. The bill for establishing a department of foreign affairs provided that the head of the department should "be removable from office by the President of the United States." Discussion at first arose in the House of Representatives on the question whether the President alone or the President and the Senate had this power under the constitution. Hamilton in one of the Federalist papers had stated that the consent of the Senate would be necessary to displace as well as to appoint. It was now urged that removal from office was part of the appointing power, that the Senate had by constitutional authority the same share in removals as it had in appointments, and that it was unconstitutional to attempt to confer the power on the President. There was also some opposition to the clause on the ground that a President might abuse the power for partisan and political ends. In opposition to this view, it was contended that the appointment and removal of officers are essentially executive acts; and that while the President's power over appointments was specifically limited by the constitution, there was no limitation on his power to remove. Madison sup-

[1] This would not restrict the power of removing subordinate agents and employees below the rank of "officers."

ported the President's power of removal; and replied to the charge that he might abuse the power, that wanton removal of meritorious officers would subject him to impeachment and removal from his own position. The motion to strike out the clause, which had been supported by those who favored Senate participation, was defeated by a vote of thirty-four to twenty.

It was next pointed out, however, that the clause did not rest the President's authority on the constitution, but attempted to confer the power on him by legislative enactment; and it was urged that it was both useless and improper for the Congress to grant a power already conferred by the constitution. Accordingly, the original clause was withdrawn: and in another part of the bill a provision was inserted for filling vacancies, "whenever the said principal officers shall be removed from office by the President of the United States, or in any other case of vacancy." This was understood and accepted as a positive declaration that the right of removal was conferred on the President by the constitution.

In the Senate there was strong opposition to the provision in the House bill, but eventually it was adopted by the casting vote of the Vice-President. And during the same session of Congress, bills organizing the Treasury department and the War department, containing precisely the same provisions, were passed by both houses.

This action took place in 1789. For 78 years the interpretation of the constitution then accepted was followed without question. Then during the quarrel between Congress and President Johnson an act was passed for the express purpose of preventing removals by the latter. This Tenure of Office Act of 1867 distinctly repudiated the construction formerly given to the constitution, but does not clearly assert whether the power of removal resides in the President and Senate under the constitution or that Congress has control over the subject. It declared that removals to be valid must be consented to by the Senate, that during the recess of the Senate the President could do no more than conditionally suspend an

officer, and that only for good cause; and that he must report all suspensions for the approval of the Senate within twenty days after the beginning of a new session.

Two years later, when President Johnson was succeeded by President Grant, the law of 1867 relating to removals and suspensions was amended by additional legislation. In the new statute, the President was permitted to suspend officers "in his discretion," instead of only on certain specified grounds. Where the former law had provided that a suspended officer should resume his office if the Senate refused to concur in the suspension, the statute of 1869 simply provided that if the Senate refused to confirm an appointment in place of a suspended officer, the President should nominate another person for the office.[1] This latter arrangement would seem to make the President's power of suspension equivalent to the power of removal, although the use of the word suspension is somewhat equivocal. Evidently President Grant was not entirely satisfied; for in his first annual message to Congress he complained of the law of 1869. But as the President and Senate were now in political accord no difficulties arose; and the statute was allowed to remain. Nor did any trouble arise until on the inauguration of President Cleveland in 1885, the President and the majority of the Senate were again politically opposed.

During the session of Congress in the winter of 1885-6, the Senate delayed action for several months on a large number of nominations made by President Cleveland to fill vacancies caused by suspensions during the preceding recess. During this period the Senate endeavored to obtain from the executive departments information as to the causes of the suspensions, and this information the executive departments, under direction of the President, declined to furnish. The President claimed that suspension was a purely executive act with which

[1] The attorney-general held that if the Senate adjourned before confirming a nomination in cases of suspension, the suspended officer became reinstated, but could be again suspended. 15 Opinions Atty.-Gen. 376.

the Senate had no concern. The Senate asserted in a Resolution that it was "the duty of the Senate to refuse its advice and consent to proposed removals of officers" when the documents and papers in reference to supposed official misconduct were withheld by the Executive. The President maintained his position; and eventually the Senate confirmed the nominations to fill the vacancies.[1]

At the next session of Congress, an Act was passed repealing the Act of 1869 amending the Tenure of Office Act of 1867. This Act of 1887 repealed the provision requiring the submission of suspensions to the Senate, and thus restored the original interpretation of the President's unlimited power of removal. According to the earlier and present construction, the Tenure of Office Acts of 1867 and 1869 were unconstitutional, since they were based on the theory that Congress had the power to determine how removals should be made.

It is true that soon after the passage of the Act of 1867, a circuit judge considered it constitutional, on the ground that Congress had full control over the question, and under the earlier system had practically conceded the right of removal to the President.[2] But in the face of subsequent events, it may be doubted whether this *dictum* is the final judicial opinion on the question.

Certainly in recent cases the Supreme Court has recognized an unlimited presidential power of removal in the face of statutory provisions similar to those which the state courts consider as limitations on the removal power of state governors. In one case it has been held that the President's power of removal applies to officers appointed for a definite term, before that term has expired.[3] And in another case it has been held

[1] Atlantic Monthly, Vol. 86, p. 1; Grover Cleveland, *Presidential Problems.*

[2] U. S. *v.* Avery, Deady's Reports, 204; 24 Federal Cases, 902. The constitutionality of the Act of 1867 was not involved in the case before the court.

[3] Parsons *v.* U. S., 167 U. S. 324 (1896).

that the President's power is not restricted by an Act of Congress defining certain causes for removal.

This latter case arose out of an Act of 1890 establishing the board of customs appraisers, which provided that the appraisers were to be appointed for no definite term, but could be removed by the President for "inefficiency, neglect of duty or malfeasance in office". This board of appraisers has been called a customs administrative court; and it seems to have been the intention to give its members a tenure approaching in permanence that of the national judiciary. In the states, a provision authorizing removals for certain causes, is regularly held by the state courts to require a statement of charges and an investigation by the removing authority. When, therefore, an appraiser named Shurtleff was removed from his position without notice of any charges or cause for his removal, he brought the question as to the legality of his removal before the judiciary. But the Supreme Court decided that the provisions of the Act did not restrict the President's power of removal to the causes specified; but in addition, the President had the power of removal at will, and that no notice or hearing was necessary.[1]

One important class of national officers—the judges—are excepted from the President's power of removal by the constitution. The provision that United States judges shall hold office during good behavior makes them irremovable except by the process of impeachment. But over all officers in the executive branch of the government, the President's power of removal is beyond question.

The extent to which the Presidents have exercised the power of removal is one of the most marked characteristics of American administration. Advocated as a necessary means to enable the President efficiently to discharge his duty to see that the laws are faithfully executed; the power has been used to make changes on a large scale at the beginning of every presidential term, and in connection with the four-year tenure

[1] Shurtleff *v.* U. S., 189 U. S., 311.

for many positions it operates to secure an almost complete change in the administrative personnel, whenever there has been a political change in the executive. While Madison held that removal of a meritorious officer would be a just cause for impeaching the President, removals for the sole purpose of creating a vacancy for a political supporter have come to be a frequent occurrence. It must be noted, however, that the custom of removals for political reasons, is a logical result of the system of political appointments.

It will be of interest to note the development in the practice of removals. Under Washington and Adams there was but little opportunity for political removals, and but few removals of any kind are recorded. Under Jefferson, there were about one hundred removals out of four hundred positions, the changes being defended on the ground that appointments had previously been confined to the Federalists. During the terms of Madison, Monroe and John Quincy Adams, which involved no change in political control, the number of removals was comparatively small, aggregating about sixty for the period of twenty years. When Jackson became President in 1829, the pressure for appointments led to a very marked increase in removals; although the extent and significance of Jackson's action has often been much exaggerated. There were about two hundred removals in about six hundred presidential offices.[1] When Van Buren succeeded Jackson, there were comparatively few removals; but after that time they were made in great abundance after each presidential inauguration, even when there was no change in party control. The inauguration of Lincoln was marked by a larger proportion of removals than at any time previously. Nearly nine hundred out of

[1] The statement frequently made that Jackson made 2,000 removals during the first year of his administration is based on a rough estimate made by Senator Holmes of Maine, which obviously includes removals from minor posts; and the comparison of this figure with the removals from presidential offices before Jackson's time is hardly just.

fifteen hundred presidential offices were vacated.[1] The continued success of the Republican party produced conditions favorable to a smaller removal rate until the inauguration of Cleveland in 1885. The quadrennial changes in party control during the next twelve years were each followed by removals on a large scale.

It is very doubtful if the transfer of the power of removal from the President alone to the President and Senate would prove an effective remedy for this condition. The difficulty lies deeper, in the prevailing custom of political appointments for positions which should be purely administrative; and until public opinion forces a change in the system of appointments, removals will inevitably be made on the same basis. Moreover it remains true, as it was argued in 1789, that the power of removal is indispensable to the President if he is to be held responsible for the administration and execution of the laws. And in addition to developing the system of political removals, from the power of removal there has been evolved in large

[1] REMOVALS FROM OFFICES BY PRESIDENTS

American Historical Association, Report 1899, p. 84.

PRESIDENTS	Removals mentioned	Cause of vacancy not named	Failure to re-appoint	Appointments vice non-acting appointees	Appointments vice temporary appointees	Commissioned during recess	Total civil officers changed	Probable number of offices	Military and naval removals
Washington	13	4	..	..	..	..	17	..	6
John Adams	14	5	2	..	..	..	21	..	6
Jefferson	48	11	8	2	..	..	*109	433	15
Madison	4	20	2	1	..	..	27	824	89
Monroe	17	10	..	..	..	..	27	..	41
J. Q. Adams	5	2	4	1	..	..	12	..	11
Jackson	164	26	58	9	5	..	252	610	27
Van Buren	26	17	30	6	1	..	80	924	19
Harrison and Tyler	375	15	60	5	3	..	458	..	19
Polk	225	3	108	6	..	..	342	..	24
Taylor	44	17	43	8	..	428	540	929	11
Fillmore	45	5	13	2	..	23	88	..	14
Pierce	676	75	38	12	..	22	823	..	37
Buchanan	197	14	203	1	1	42	458	1520	28
Lincoln	862	25	46	11	..	513	1457	..	182
Johnson	455	200	142	25	10	71	903	2669	131
	3169	445	762	89	20	1089	5614		660

*Including 40 midnight appointments not recognized.

measure, the President's effective power of direction and supervision over the entire national administration.

Power of Direction.—Not only does the President exercise much influence over the personnel of the administration through his powers of nomination and removal, but he can also control and direct in large degree, the actions of the administrative officials. The constitutional provisions which authorize this power are those vesting the executive power in the President, and requiring him to take care that the laws are faithfully executed. But the principal means by which the President can make his control effective is the power of removal, the possibility of which will usually secure obedience to his orders, while if any official persists in disobedience his removal permits the appointment of some one who will carry out the President's wishes.

Although the authority to see that the laws were executed was clearly specified in the constitution, and the power of removal was recognized from the first as belonging to the President, the early statutes organizing the administrative services did not always acknowledge the President's power of direction. In some cases the power of direction was expressly recognized, as in the acts organizing the departments of foreign affairs and of war; but in these branches of administration the President was given by the constitution more specific authority, which could not readily be overlooked. On the other hand, the act of 1789, organizing the department of the Treasury, contained no reference to any presidential power of direction, and indicated that the administration of the finances was to be kept under the close supervision of Congress. The act provided that the secretary of the treasury should perform all such services relative to the finances as he should be directed to perform, while the context shows that the direction of Congress and not of the President was meant. Furthermore, the secretary of the treasury, unlike the other secretaries, was to make his report, not to the President, but to Congress. So,

too, the Post-Office department was organized without any reference to presidential control or direction.

The view thus negatively indicated that the President had but a limited power of direction, is more positively expressed in a judicial opinion in one of the United States courts as late as 1835:—

"The legislature may prescribe the duties of the office at the time of its creation or from time to time, as circumstances may require. If those duties are absolute and specific, and not by law made subject to the control or direction of any superior officer who is by law especially authorized to direct how those duties are to be performed, the officer whose duties are thus prescribed by law is bound to execute them according to his own judgment. That judgment cannot lawfully be controlled by any other person . . . . As the head of an executive department he is bound, when required by the President, to give his opinion in writing upon any subject relating to the duties of his office. The President, in the execution of his duties to see that the laws are faithfully executed, is bound to see that the postmaster-general discharges 'faithfully' the duties assigned by law; but this does not authorize the President to direct him how he shall discharge them."[1]

This opinion indicates the earlier conception of the President's power of direction. But even before it was uttered, it had been effectively overruled by the action of President Jackson in forcing the secretary of the treasury to remove the government deposits from the United States bank. Notwithstanding the semi-independent position given to the secretary of the treasury by Congress, and although the control of government funds was given specifically to that officer; when Jackson determined that they should no longer be deposited in the United States bank, he first transferred one recalcitrant

[1] United States *v.* Kendall, 5 Cranch, C. C. 163, 272. Cf. also Kendall *v.* U. S., 12 Peters 610, where a more guarded opinion on the same point is given by Justice Thompson of the Supreme Court: "It by no means follows that every officer in every branch of that [the executive] department is under the *exclusive* direction of the President . . . . It would be an alarming doctrine, that Congress cannot impose upon any executive officer any duty they may think proper, which is not repugnant to any rights secured and protected by the constitution; and in such cases, the duty and responsibility grow out of and are subject to the control of the law, and not to the direction of the President."

secretary (McLane), and removed his successor, who also declined to act as the President wished, and finally secured one (Taney) who executed his wishes. There was strong opposition to this action on the part of the President, and the Senate passed a resolution of censure. But this did not alter the situation. The President had demonstrated his authority, and established a precedent; and so long as the power of removal is not restricted, it is clear that the President can in fact control the action of any administrative officer in the national service.

Since the time of President Jackson's action, the larger scope of the presidential power of direction has come to be more clearly recognized. Congress has added to the specific grants authorizing the President to direct the executive departments. Attorneys-general have presented opinions as to the President's authority, couched sometimes in extravagant terms. While the Supreme Court has clearly indicated that the President's authority is not limited to the express terms of congressional statutes.

Under existing statutes the President has specific and positive authority to issue instructions and orders to the secretary of state, the secretary of war, and the secretary of the navy; to require the legal opinion of the attorney-general,[1] and to cause even the secretary of the treasury to promulgate regulations for a special purpose.[2] He has also express statutory authority to "call out the militia of any state or employ the land and naval forces to suppress rebellion against the United States, when the ordinary course of judicial proceedings is in his judgment impracticable."[3]

But in addition to these and many other detailed duties and powers imposed by statutes, the President issues directions and instructions in many cases not directly covered by any specific provision of the statutes. Thus he has used the army for the protection of the mails without express statutory authority.

[1] *Revised Statutes*, §§ 202, 216, 417, 354
[2] Acts of 1890. c. 51.
[3] *Revised Statutes*, § 5298-9.

And he has authorized a guard for the protection of a justice of the Supreme Court in the discharge of his duties.

Such extra-statutory authority of the President has been repeatedly supported by the attorneys-general, and has been distinctly upheld by the Supreme Court.

Perhaps the best general statement of the present situation in this question is the following quotation from an attorney-general's opinion, which is paraphrased from a Supreme Court opinion in reference to the authority of a head of a department:

"'The President 'is limited in the exercise of his powers by the Constitution and the laws; but it does not follow that he must show a statutory provision for everything he does. The government could not be administered upon such contracted principles. The great outlines of the movements of the executive may be marked out, and limitations imposed upon the exercise of his powers, yet there are numberless things which must be done, which cannot be anticipated and defined, and are essential to useful and healthy action of government.' '"[1]

An extreme view of the President's power is given in an opinion by Attorney-General Cushing in 1855:

"'I think the general rule to be . . . that the head of a department is subject to the direction of the President. I hold that no head of a department can lawfully perform an official act against the will of the President, and that will is by the constitution to govern the performance of all such acts. If it were not thus, Congress might by statute so divide and transfer the executive power as utterly to subvert the government and change it into a parliamentary despotism like that of Venice or Great Britain, with a nominal executive chief or President utterly powerless—whether under the name of Doge or King or President would then be of little account so far as regards the maintenance of the constitution.' '"[2]

Not only have the attorneys-general of the United States clearly approved of a presidential power of direction in addition to that expressly authorized by statute; but the Supreme Court has in several cases recognized such extra-statutory executive authority. Thus the right of United States agents, acting under instructions from the secretary of the interior,

[1] 6 Opin. Atty.-Gen. 10,365; 8 Opin. Atty.-Gen. 343; 10 Opin. Atty.-Gen. 413; Cf. U. S. *v.* Macdaniel 7 Peters 14 (1833).

[2] 7 Atty.-Gen. Op. 453, 470.

to seize timber cut from government land, without any positive statutory authority for such instructions, has been upheld.[1] So, too, the right of the attorney-general to institute a law suit where the United States had a just cause for action, even in the absence of any act of Congress expressly authorizing it, has been affirmed.[2] And, again, it has been held that the power of the President to see that the laws are faithfully executed authorizes, without any express statutory grant, the designation of a deputy marshal as a guard to protect a United States justice from probable danger, and that a deputy marshal so assigned cannot be held responsible before any state court for any act performed in the discharge of this duty.[3] Says Justice Miller, in this last case, "We cannot doubt the power of the President to take measures for the protection of a judge of one of the courts of the United States, who, while in the discharge of the duties of his office, is threatened with a personal attack which may probably result in his death."

While the President thus has now a recognized and effective power of direction over executive officials, this is exercised mainly on his own initiative, and he does not entertain appeals from or exercise a power of revision over the acts of officials on matters within their competence. In the opinion of various attorneys-general, the President has no power to correct by his official act the errors of judgment of incompetent or unfaithful subordinates, and there is no appeal to the President from the decision of the head of a department in such cases.[4] If this rule were not adopted the President would be overwhelmed with appeals on matters of detail and the transaction of public business would be seriously interrupted. Where, however, the question refers to the jurisdiction or

[1] Wells *v.* Nickles, 104 U. S. 444.

[2] U. S. *v.* San Jacinto Tin Co., 102 U. S., 273, 279, 280.

[3] In re Neagle, 135 U. S. 1, 63, 67, 75.

[4] Opinions of the Attorneys-General, 1:624, 636, 678; 2:481, 507; 4:515; 5:275, 630; 6:226; 10:526, 527; 11:14; 13:28.

competence of the subordinate officer, an appeal to the President has been allowed:

"The President in the exercise of his general administrative superintendence may interfere to restrain an officer from assuming an authority that does not belong to him, as he unquestionably may to compel the officer to perform a duty that does belong to him.

"In none of the other instances where the President's power was denied was the jurisdiction of the department officer in any degree involved; but merely the correctness of his official action in matters admitted to be within his competency."[1]

Ordinance Power.—The President's control over the conduct of the national administration is exercised in large measure by the issue of ordinances or executive regulations. Owing to the much greater detail in legislative statutes, executive regulations are less important in the United States than the ordinances of the German Bundesrath or the decrees of the French President, and even less important than the orders in council in Great Britain; but most writers have exaggerated the extent of congressional control and underrated the field of executive regulation in the American national administration. There are, in fact, many elaborate systems of executive regulations governing the transaction of business in all the various branches of the administration. These include organized codes of regulations for the army and navy, the postal service, the patent office, pension office, the land office, the Indian service, the customs, internal revenue and revenue cutter services, the consular service, and the rules governing examinations and appointments to the whole subordinate civil service. And in addition to these systematized rules there is an enormous mass of individual regulations, knowledge of which is limited to the few persons who have to apply them and to those whom they affect.

"It is difficult to form a true conception of the vastness and importance of all this great body of executive regulation law, controlling, as it does the administration of all the executive departments with its rules of action. And when we consider that these rules of action are in general

[1] 15 Atty.-Gen. Op. 101-102.

made, construed and applied by the same authority, thus combining quasi-legislative, quasi-judicial and executive authority, we cannot fail to be impressed with the extent of the jurisdiction covered by them.'"[1]

These executive regulations are sometimes issued in accordance with statutory provisions, sometimes without any express authorization as an exercise of the constitutional executive power. Regulations made pursuant to statutes are very common. Thus the President is specifically authorized to make regulations for the purchase and disposition of supplies for the navy, in relation to the duties of the diplomatic and consular officers, for admission to the civil service, and in reference to killing fur seals; he may suspend tariff duties on imports from countries which enter into reciprocity agreements; he is authorized to prescribe the uniform for the army; and he has explicit power to establish internal revenue districts, pension agencies and forest reservations.[2]

Other regulations, although not expressly authorized, supplement certain statutes, prescribing means for carrying them into effect in the absence of sufficient legislative regulation. Such regulations are often in the nature of interpretations of the statutes. The regulations governing the revenue cutter service are the most important example of this class; and are of especial significance, since they establish a penal system with a code of penalties and a system of procedure, all resting on executive action alone.[3]

Still other regulations are issued by the President by virtue of his special constitutional powers. In this group are the greater part of the army regulations issued by the President as commander-in-chief.

Most of the executive regulations are not issued directly by the President, but are prepared in the department concerned, and issued by the head of department. But regulations issued

[1] G. N. Lieber, *Remarks on Army Regulations*, p. 47.

[2] *Revised Statutes*, §§ 1296, 1549, 1752, 1753, 3141, 4778, 4780, Acts of 1891 c. 561.

[3] Lieber, *Army Regulations*, p. 46.

in this way are considered as the acts of the President, and he is regarded as responsible for them.

"The President speaks and acts through the heads of the several departments in relation to subjects which appertain to their respective duties. . . . . We consider the act of the War department in requiring this reservation to be made, as being in legal contemplation the act of the President."[1]

The most important executive regulations issued directly by the President are the civil service rules and the consular regulations.

Two interesting legal questions have arisen concerning executive regulations. First, are they not legislative acts, and therefore beyond the competence of the executive, and beyond the power of Congress to delegate? Second, if they are constitutional because not acts of legislation, are they rules of law which will be enforced by the judicial courts, or is their enforcement secured only by administrative processes?

On the first question, United States judges have held, on the one hand, that Congress may delegate the power to make rules and regulations, and, on the other hand, that this does not constitute a delegation of legislative power. These views would seem to be logically inconsistent with each other; and the inconsistency is not removed by pointing out the difficulty of drawing the line between legislative action and executive discretion. For Congress possesses only legislative power, and it would seem that any delegation of power by Congress must be a delegation of legislative power. If this view is correct, statutory authorizations of executive regulations are either a grant of legislative power, or they are not grants of power, but merely expressions of opinion by Congress that the details left for executive regulation are not legislative in character.

In some cases Congress has authorized executive regulations which approach very closely the field of legislative action. The most notable instance is in the reciprocity clause of the

[1] Wilcox *v.* Jackson, 13 Peters, 498, 513; see also U. S. *v.* Eliason, 16 Peters, 291.

tariff act of 1890, which authorized the President to suspend other clauses of the act permitting the importation of certain commodities free of duties, with reference to goods imported from countries which imposed duties on American products deemed by the President to be reciprocally unequal and unreasonable. By this provision the imposition of duties was made to depend on the action of the President. The opinion of the Supreme Court as to the constitutionality of this power, in the case of Field *v.* Clark,[1] discusses previous instances of somewhat similar provisions, while the dissenting opinion of two judges serves to emphasize the point at issue.

It was shown that there were numerous instances where Congress had authorized the President to suspend the operation of certain statutes, under given conditions, and some cases where more positive authority had been conferred. The acts which gave the greatest extent of discretionary power to the President were the Embargo Act of 1794, and the Non-Intercourse Act of 1799. The former authorized the President to lay an embargo on shipping "whenever, in his opinion, the public safety shall so require." The latter authorized the President to remit and discontinue the restrictions placed by the act on commercial intercourse "if he shall deem it expedient and consistent with the interest of the United States." These and other acts were cited as showing the congressional interpretation of the question. But the only act of this kind which had received judicial recognition was the Non-Intercourse Act of 1809, which authorized the resumption of trade when the President by proclamation declared that France or Great Britain had revoked or modified the edicts violating the neutral commerce of the United States. This act was upheld by the Supreme Court[2] on the ground that the act of the President merely announced the condition or fact which the legislature prescribed as necessary to the resumption of trade.

Following this precedent, the majority of the court held that

[1] 143 U. S. 649.

[2] The Brig Aurora, 7 Cranch, 382, 388.

the clause in the Act of 1890 also left to the President simply the determination of a fact or contingency upon which the suspension of free importation was to take effect.

"Congress itself prescribed in advance the duties to be levied. . . . . The words 'he may deem' . . . . implied that the President would examine the commercial regulations of other countries . . . and form a judgment as to whether they were reciprocally equal and reasonable, or the contrary, in their effect upon American products. But when he ascertained the fact that duties and exactions reciprocally unequal and unreasonable were imposed . . . . . it became his duty to issue a proclamation declaring the suspension, as to that country, which Congress had determined should occur. . . . The President was the mere agent of the law-making department to ascertain and declare the event upon which its expressed will was to take effect."

From this opinion Justice Lamar and Chief Justice Fuller dissented. It was urged that the legislative precedents could not bind the judiciary in interpreting the constitution; and that the provision under consideration differed radically from that in the Non-Intercourse Act of 1809.

"It does not, as was provided in the statutes of 1809 and 1810, entrust the President with the ascertainment of a fact therein defined upon which the law is to go into operation. It goes further than that, and deputes to the President the power to suspend another section in the same act whenever 'he may deem' the action of any foreign nation producing and exporting the articles named in that section to be 'reciprocally unequal and unreasonable;' and it further deputes to him the power to continue that suspension and to impose revenue duties on the articles named 'for such time as he may deem just.' This certainly extends to the executive the exercise of those discretionary powers which the Constitution has vested in the law-making department. It unquestionably vests in the President the power to regulate our commerce with all foreign nations which produce sugar, tea, coffee, molasses, hides, or any of such articles."

It will be noted that the difference of opinion was as to whether the powers conferred were legislative or not; and the view of the majority of the court throws open a wide field for delegated executive regulations. But the entire court accepted the view that Congress cannot delegate legislative power, apparently the first specific expression by the United States Supreme Court of a maxim uniformly held by the state courts.

Executive regulations not expressly authorized by statute depend either on the general executive power to enforce the laws or on special constitutional powers such as the command of the army. The power to establish rules to aid in the execution of laws seems to be clearly established by long practice; and some limitations on this power have been laid down by the courts. An executive regulation interpreting a statutory provision may be overruled as erroneous by the judiciary. And regulations which encroach on the legislative power have been declared void. Thus it was held that the Inter-State Commerce Commission had no power to establish a schedule of railroad freight rates, on the ground that this was legislative power which had not been clearly delegated to the Commission.[1] There is a slight implication in Justice Brewer's opinion on this case that if the power had been clearly conferred it might have been considered legal.

Army regulations issued by the President as commander-in-chief of the army have been repeatedly recognized as legal, notwithstanding the constitutional provision giving Congress the power to make rules for the government and regulation of the land and naval forces.

"The power of the executive to establish rules for the government of the army is undoubted. . . . The power to establish implies, necessarily the power to modify or repeal, or to create anew. . . . Such regulations cannot be questioned or defied because they may be thought unwise or mistaken."[2]

Executive regulations can in most cases be effectively enforced through the President's control over the personnel of the administrative service; and having this sanction can be considered law in the broader sense of the word. The question has however arisen whether or not they are rules of law which will be recognized and enforced by the judicial courts; and the general reply may be made that while to a large degree they

[1] 167 U. S. 479.

[2] U. S. *v.* Eliason, 16 Peters, 301. See also U. S. *v.* Freeman, 3 Howard, 118; Gratiot *v.* U. S. 4 Howard, 118; Kurtz *v.* Moffit, 115 U. S. 503; Swaim *v.* U. S., 165 U. S., 553.

are so accepted by the judiciary, there are some limitations on this recognition. The Supreme Court has held distinctly that executive regulations prescribed in pursuance of express authority of Congress "become a mass of that body of public records of which the courts take judicial notice."[1] In another case it has been declared that:

"Regulations prescribed by the President and by the heads of the departments, under authority granted by Congress, may be regulations prescribed by law, so as lawfully to support acts done under them and in accordance with them, and may thus have in a proper sense, the force of law; but it does not follow that a thing required by them is a thing so required by law as to make the neglect to do the thing a criminal offense in a citizen, where a statute does not distinctly make the neglect in question a criminal offense."[2]

A special form of this question, on which the United States circuit courts have differed in their opinions, has been whether an injunction would be issued to prevent a removal from office, held to be in violation of a civil service rule prohibiting removals for political causes. In several such cases, it has been held that the civil service rules are merely administrative regulations, enforceable by the executive, which had ample authority to secure their observance; but that a court of chancery had no jurisdiction to compel their enforcement.[3] In another case, however, another circuit judge decided that these rules constituted a part of the law which a court of equity had jurisdiction to enforce.[4]

[1]Caha *v.* U. S., 152 U. S. 211, 223.

[2]U. S. *v.* Eaton, 144 U. S. 677, 688.

[3]Carr *v.* Gordon, 82 Federal Reporter 379; Taylor *v.* Kercheval, 82 Fed. Rep. 497; Morgan *v.* Dunn, 84 Fed. Rep. 551.

[4]Butler *v.* White, 83 Fed. Rep. 578.

CHAPTER II

The President—II

SPECIAL ADMINISTRATIVE POWERS

Turning now to those particular branches of administration where the constitution confers on the President special powers, we shall find that in these fields he has still more ample authority. Not only do the constitutional grants guard him from encroachment on the part of Congress, but they enable him at times to assume a large degree of legislative power.

Foreign Relations.[1]—By the constitution all foreign relations are entrusted either to the President alone, or to the President in connection with the Senate; and Congress as a whole has no control in these matters, except in certain instances to pass laws to carry out the provisions of treaties. Several distinct clauses of the Constitution deal with this subject. "He [the President] shall receive ambassadors and other public ministers accredited from foreign governments." "He shall nominate, and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls." "He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur." "All treaties made, or which shall be made under the authority of the United States shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding."

These powers may be differentiated into two main divisions: the power of communication and negotiation with foreign countries, which is under the complete control of the Presi-

[1] Pomeroy, *Constitutional Law*, ch. 5, sec. 4.

dent; and the power of making formal and binding international agreements, having the force of law, which is shared by the President and Senate.

The President has full control over all intercourse, communications and negotiations between the United States and all other governments; and while these are for the most part carried on through the secretary of state, that officer acts as the direct and personal agent of the President. The latter is kept more closely informed of the details of foreign negotiations than of other departments, and in important matters takes an active part in the negotiations. Ambassadors and other ministers from foreign countries to the United States present their credentials to the President, and must be formally received by him. By this means he officially recognizes newly established governments. Ministers from the United States to foreign countries are nominated by the President; and while the nominations must be confirmed by the Senate, the President exercises a larger personal influence in these appointments than in others, while his power of nominating such officers cannot be transferred to any other official. In any case, the Senate's control over these ministers ends with their confirmation. Their duties are performed entirely under the direction of the executive. Instructions are sent to them, claims and demands presented, replies to foreign governments forwarded, from the President, acting through the department of State. Moreover, all correspondence and negotiations are generally conducted in secret; and seldom published until after some conclusions have been reached. The degree of discretionary action left to the secretary of state will naturally vary with circumstances,—such as the relative experience of that officer and the President in diplomatic affairs, the President's sense of propriety and his convictions on a given subject. But the responsibility in every case rests on the President alone; and the importance of the matters involved make essential his close personal attention.

Through this power over negotiations with foreign countries

the President has a momentous and far-reaching authority. He has the sole initiative in making treaties, determining the subject matter, and proposing and agreeing to stipulations. Only after the formal draft of a treaty has been accepted by the President is it submitted to the Senate, so that it is impossible for that body to dictate a treaty. Moreover, the President may so conduct diplomatic negotiations as to force the country into a war, without any possibility of hindrance from Congress or the Senate.

While in the conduct of negotiations the President has unlimited power, formal treaties with foreign countries can be concluded only "by and with the advice and consent of the Senate, providing two-thirds of the Senate present concur." In this matter, as in reference to appointments, there has been some question as to the rights of the Senate under the clause providing for its advice and consent; and the established practice has been somewhat different in the case of treaties from that in the case of appointments.

The "advice" of the Senate as a body, is not ordinarily called for or given before a formal treaty is presented for its consent. But there have been some instances of this; while it is more customary for members of the Senate committee on foreign relations to be kept informed of the progress of important negotiations. In any case, however, the Senate does not consider itself bound simply to accept or reject a proposed treaty; but has on various occasions introduced amendments as a condition of its consent. When the Senate makes such amendments, it is possible for the President to abandon the treaty, if he prefers such action to further negotiations for the amended treaty. If the President accepts the Senate amendments, it is necessary to carry on further negotiations with the foreign government and its consent to the changes before the treaty is definitely concluded. A recent notable instance of the Senate's influence was in the Hay-Pauncefote treaty of 1900, where the Senate's amendments led to renewed negotiations and the drafting of a new treaty.

There must next be noted the influence of Congress over treaties.

"Our constitution declares a treaty to be the law of the land. It is consequently to be regarded in courts of justice as equivalent to an act of the legislature, whenever it operates of itself without the aid of any legislative provision. But when the terms of the stipulation import a contract, when either of the parties engages to perform a particular act, the treaty addresses itself to the political, not the judicial department, and the legislature must execute the contract before it can become a rule for the court."[1]

Most generally the necessity for such congressional action arises where a treaty provides for a payment of money, which can be made only by virtue of an appropriation regularly passed by both houses of Congress.

Where a treaty and a statute conflict, which prevails over the other? It has been clearly decided in a number of cases that if the statute is later in date the courts will be bound by the statute when it conflicts with an earlier treaty.

"So far as a treaty made by the United States with any foreign nation can become the subject of judicial cognizance in the courts of this country, it is subject to such acts as Congress may pass for its enforcement, modification, or repeal."[2]

Congress has thus power to amend the provisions of a treaty or to annul a treaty; and its acts for these purposes will be accepted by the United States courts. The only remedies open to a foreign government are those for the violation of a treaty, —a protest, and in the last resort, war.

If the treaty is later in date, there is evidence that the converse of the above rule would also apply. For in deciding cases under the rule stated, the courts have based their judgments on the general principle that the later expression of law should prevail over the earlier.

"By the constitution a treaty is placed on the same footing and made of like obligation with an act of legislation. Both are declared by that instrument to be the supreme law of the land, and no superior efficacy is

[1] Foster *v.* Neilson, 2 Peters, 253.

[2] Head Money Case, 112 U. S. 580, 597; Whitney *v.* Robertson, 124 U. S. 190; Chinese Exclusion Cases, 130 U. S. 600; 149 U. S. 698.

given to either over the other. . . . If the two are inconsistent, the one last in date will control, providing always the stipulation of the treaty is self-executing.'"[1]

But the application of this rule in favor of a treaty conflicting with an earlier statute does not seem to have been made as yet.

It has been maintained by the House of Representatives that treaties affecting the revenue laws do not go into effect until authorized by an Act of Congress; and this claim has been admitted on several occasions, as in the case of the recent reciprocity treaty with Cuba.

The execution of treaties, so far as it is not dependent on legislative action, comes—like the execution of other laws—under the direction of the President. One class of treaties—those providing for the extradition of criminals—generally impose on the President the function of surrendering fugitive criminals to foreign powers. An exception to this rule is found in the treaty between the United States and Mexico, which authorizes the chief executives of the frontier states and territories to grant extradition in some cases. But, even in these cases, the President may intervene and make the final decision.

As a matter of practice the warrant of surrender for extradited criminals is issued not by the President in person, but by the secretary of state. It is also dependent on the power of judicial magistrates to discharge a fugitive. Formerly it was held that where a fugitive was committed by a judicial magistrate for extradition, the action of the executive was purely ministerial; but more recently the President has exercised discretionary power to refuse to surrender fugitives even after commitment.[2]

Military Powers.—The President is by the constitution, commander-in-chief of the army and navy, and also of the state militia when in the service of the United States. Con-

[1] Whitney *v.* Robertson, 124 U. S. 190.

[2] J. B. Moore, *Extradition and Inter-State Rendition*, I, 549, 555.

gress, however, has the power of declaring war and of military legislation. It is thus difficult, if not impossible, to draw a strict line of demarcation between the authority of Congress and that of the President. But the general principles of demarcation can be indicated; and in practice there have been very few important conflicts. Congress regulates whatever is of general and permanent importance, while the President determines all matters temporary and not general in their nature. Thus Congress authorizes the total number of men in the army, their distribution among the different branches of the service, the number and kind of arms, the location and character of forts; and the President, as chief executive, must carry out the statutes on these matters. But the President, as commander-in-chief, decides where the different parts of the army and navy are to be stationed and moved, the strength and composition of garrisons and field forces, and the distribution of arms and ammunition. Congress has power to declare war (although hostilities may commence without such a declaration), and decides what means it will grant to conduct the war; but the President decides in what way the war shall be conducted, directs campaigns and establishes blockades,[1] and also may do whatever is necessary to weaken the fighting power of the enemy. It was on this last ground that President Lincoln issued the emancipation proclamation.

The war power of the President is not limited to matters directly involved in the conduct of war, but extends beyond purely military actions to the domain of the exceptional relations which arise as a result of war. Thus in the case of territory conquered or occupied in war, the President can appoint a military governor and establish a military government, which may end only upon the conclusion of peace, and (if there is ceded territory) upon legislation by Congress.[2] The same power was exercised over the territory of the seceding states, after the Civil War. In both cases, too, the President may

[1] The Prize Cases, 2 Black, 635.

[2] Cross *v.* Harrison, 16 Howard, 193.

appoint a provisional civil government, with power to organize courts, and administrative officials, and levy taxes. But after the ratification of a treaty ceding territory, neither the President nor a government established under his military powers, can impose tariff duties on imports into the ceded territory from the United States, nor on imports into the United States from the ceded territory.[1]

How far the military powers of the President extend over territory not directly involved in the military operations was a subject of discussion during and after the Civil War. At the outset of the war, the attorney-general claimed for the President the right to refuse obedience to a writ of *habeas corpus;* and Lincoln afterward issued a proclamation suspending the writ. Later, however, the suspension of the writ of *habeas corpus* was authorized by Congress. Numerous military arrests were made during the war, not only in the neighborhood of military operations, but also in the northern states, and in some cases hundreds of miles distant from any field of action. After the war a case was brought to the Supreme Court of the United States, involving the legality of military trials and punishment of civilians under such circumstances; and the court laid down the rule that martial law should be established only in such districts of the home country where the regular courts could not exercise their functions.

"It follows from what has been said on this subject that there are occasions when martial rule can be properly applied. If, in foreign invasion or civil war, the courts are actually closed, and it is impossible to administer criminal justice according to law, then, on the theater of active military operations, where war really prevails, there is a necessity to furnish a substitute for the civil authority, thus overthrown, to preserve the safety of the army and society; and as no power is left but the military, it is allowed to govern by martial rule until the laws can have their free course. As necessity creates the rule, so it limits its duration; for, if this government is continued after the courts are reinstated, it is a gross usurpation of power. *Martial rule can never exist where the courts are*

[1] De Lima *v.* Bidwell, Dooley *v.* U. S., 182 U. S. 1, 222; Fourteen Diamond Rings *v.* U. S., 183 U. S. 176.

open, and in the proper and unobstructed exercise of their jurisdiction. It is also confined to the locality of actual war.'"[1]

Chief Justice Chase and Justices Wayne, Swayne and Miller dissented on the ground that in time of war Congress had power to determine the districts where martial law should be put in effect, even in places where the courts were in operation. The dissenting opinion also pointed out the difference between military law, military government and martial law.

It is worth noting that the rule thus laid down does not seem to have been put into force. The judgment of the court in the case in question was apparently not executed; and the question may therefore be raised whether the opinion of the court on this matter has the sanction necessary to constitute a rule of law. In any case it was too late to affect the powers exercised by President Lincoln. Nevertheless, the opinion has value as showing the view taken by the Supreme Court; and would doubtless have a strong moral influence in restraining a future President from exercising similar powers.

While the President's military powers become vastly more significant during the conduct of war, they are also of large importance in maintaining internal order and suppressing resistance to law not amounting to war. For these latter purposes the army is actively employed under two sets of conditions: To protect a state against domestic violence, as guaranteed by the constitution; and to enforce the laws of the United States and protect the instrumentalities of the national government against unlawful interference.

The constitutional guarantee to protect the states against domestic violence limits its application to cases where protection is sought by the legislature or the executive of the state. The guarantee is, however, expressed in the name of the United States, without indicating clearly which department of the national government is entrusted with its enforcement. In reference to the guarantee of a republican form of government, the Supreme Court has held that it rests with Congress to

[1] *Ex parte* Milligan, 4 Wallace, 2.

decide what is the established government in a state and whether it is republican or not.[1] But Congress itself has authorized the President to act on applications from a state to suppress domestic violence. The Militia Act of 1795 provided that:

"In case of an insurrection in any state against the government thereof, it shall be lawful for the President of the United States, on application of the legislature of such state, or of the executive (when the legislature cannot be convened), to call forth such number of the militia of any other state or states, as may be applied for, as he may judge sufficient to suppress such insurrection."

In case of invasion or imminent danger of invasion from any foreign nation or Indian tribe, the President was authorized to use the militia without application from the state authorities. The Act of 1807 authorized the use of the land and naval forces wherever the militia had been authorized, and the Revised Statutes provide for the use either of the army and navy or of state militia to suppress insurrection within a state.[2]

In cases of domestic violence the President was restricted by the condition that he should act on application of the state authorities. But under other circumstances he was authorized to act without any such condition expressed. This larger power of independent action was provided for, on the one hand in cases of invasion or imminent danger of invasion and on the other hand in cases of opposition to the laws of the United States. The former class of cases deal distinctly with the conduct of war, which has already been considered. In reference to the latter, it is important to notice the statutory provisions and questions that have arisen in the exercise of the authority.

The Militia Act of 1795, already mentioned, authorized the President to call out the militia "whenever the laws of the United States shall be opposed, or the execution thereof obstructed, in any state, by combinations too powerful to be suppressed by the ordinary course of judicial proceedings, or

[1] Luther *v.* Borden, 7 Howard, 1; Texas *v.* White, 7 Wallace, 700.

[2] *Revised Statutes*, § 5298.

by the powers vested in the marshals by this act." The Act of 1807 authorized the use of the army and navy under these same circumstances. Under this authority troops were used on various occasions to overcome resistance to the internal revenue laws[1] and for other purposes. And it was under these provisions that President Lincoln issued his first call for militia. By the Act of July 29, 1861, the authority of the President was increased; and he was authorized to use the militia or the army and navy "whenever, by reason of unlawful obstructions, or assemblages of persons, or rebellion against the authority of the government of the United States, *it shall become impracticable, in the judgment of the President, to enforce by the ordinary course of judicial proceedings* the laws of the United States within any state or territory."

This provision in the statutes has been continued since the Civil War; and even after the process of reconstructing the southern states was accomplished national troops were stationed in these states and employed especially in enforcing the national laws regulating the elections for presidential electors and members of Congress, commonly known as the force bills. But opposition in Congress to this policy prevented the passage of the Army Appropriation bill in 1877 until four months after the expiration of the former appropriation, and led to the adoption next year of a statutory provision to limit the use of troops. The Army Appropriation Act of 1878 provided that "from and after the passage of this act it shall not be lawful to employ any part of the army of the United States as a *posse comitatus*, or otherwise, for the purpose of executing the laws, except in such cases and under such circumstances as such employment of said force may be expressly authorized by the Constitution or by act of Congress."

Among the purposes for which the use of the army and navy is expressly authorized by acts of Congress are: in reference to Indian affairs, the protection of the public lands, the execution

[1] E. g. *The Whiskey Rebellion in Pennsylvania*, See 16 Opin. Atty.-Gen. 162.

of neutrality laws, the protection of merchant marine and the suppression of piracy, the enforcement of judicial proceedings and the suppression of insurrections or unlawful combinations obstructing the laws of the United States.[1]

During the railroad strikes of 1894 United States troops were employed without request from the state governments to a much larger extent than formerly. The Governor of Illinois protested against action ignoring the state government; but it was shown that the employment of the troops was in accordance with the constitution and laws of the United States.[2]

They were used to enforce the laws prohibiting the obstruction of the mails and conspiracies against inter-state commerce,[3] and to secure the execution of judicial processes of the United States courts. The broader scope of action at this time was due in part to a new interpretation as to what constituted an obstruction of the postal service. Formerly where strikers had cut out passenger and baggage cars from a mail train, but did not directly prevent the movement of the postal cars, it had been assumed that they were not obstructing the postal service. But it was now held that interference with any part of a mail train constituted an obstruction to the postal service. Another factor, however, in the extension of the field for the employment of the army was the recent statute prohibiting conspiracies against inter-state commerce.

The interpretation of President Cleveland as to the powers and duty of the executive under the circumstances was approved by the Supreme Court[4] and by the Senate and House of Representatives in resolutions adopted by both bodies.

[1] *Revised Statutes*, §§ 2118-2152, 2460, 4293, 4792, 5275, 5286, 5297-5299.
[2] *McClure's Magazine*, vol. 23, 227.
[3] *Rev. Stat.* § 3995; Act of July 2, 1890.
[4] In re Debs, 158 U. S. 581:

"If all the inhabitants of a state, or even a great body of them, should combine to obstruct inter-state commerce or the transportation of the mails, prosecutions for such offenses had in such a community would be doomed in advance to failure. And if the certainty of such failure was known and the national government had no other way to enforce the free-

The Pardoning Power.—The President is empowered by the constitution, "to grant reprieves and pardons for offenses against the United States, except in cases of impeachment." A pardon has been defined by Chief Justice Marshall, as "an act of grace, proceeding from the power entrusted with the execution of the laws, which exempts the individual, on whom it is bestowed, from the punishment the law inflicts for a crime he has committed."[1] It will be noted that the President's power to pardon is limited to offenses against the United States. But as to these offenses the power is complete. He can remit every punishment from a money penalty up to and including the death penalty. In a few respects, however, a pardon does not annul all the legal consequences of a sentence. In cases of forfeiture, so far as others have acquired a legal right to the goods forfeited, the pardon remains inoperative; and a pardon does not effect reinstatement in a forfeited office.[2] A pardon may be granted on certain conditions; and a remission of part of a sentence is regarded as a conditional pardon.[3] But a penalty of an entirely different kind from the one imposed cannot be inflicted by a pardon. The power of pardon may be exercised at any time after the offense has been committed, either before legal proceedings are taken, or during their progress, or after conviction and judgment.[4] Presidents

dom of inter-state commerce and the transportation of the mails than by prosecution and punishment for interference therewith, the whole interests of the nation in these respects would be at the absolute mercy of a portion of the inhabitants of a single State.

"But there is no such impotency in the national government. The entire strength of the nation may be used to enforce in any part of the land the full and free exercise of all national powers and the security of all rights entrusted by the constitution to its cares. The strong arm of the national government may be put forth to brush away all obstructions to the freedom of inter-state commerce or the transportation of the mails. If the emergency arises, the army of the nation, and all its militia, are at the service of the nation to compel obedience to its laws."

[1] United States *v.* Wilson, 7 Peters, 150, 159.

[2] Von Holst, *Constitutional Law*, p. 210.

[3] *Ex parte* Wells, 18 Howard, 307.

[4] *Ex parte* Garland, 4 Wallace, 333, 380.

have also issued general pardons, or amnesties, to a class of offenders without designating particular individuals by name.

In the exercise of these pardoning powers the President is subject to no legal control. Congress has attempted to restrict the practical effect of a general amnesty, by a statute declaring that the acceptance of a pardon should be conclusive evidence of guilt, and persons thus established as guilty should be precluded from enforcing certain legal rights and claims against the government. But the Supreme Court pronounced this statute null and void, because it invaded the exclusive province of the President by restricting the force and effect of the power of pardon, and also of the judiciary by changing the legal import of their judgments.[1] The only remedy against the gross abuse of the pardoning power is the right of impeachment.

Limitations on Presidential Power.—This discussion has shown that the President has the means of exercising a thorough and far-reaching control over every branch of the national administration, with still further authority over certain particular administrative services. A brief space may now be given to the limitations on his authority.

Attention has already been called to the limitations imposed by the executive powers of the Senate over appointments and treaties. Congress has also important means of controlling the administration and so limiting the President's powers. The effective methods of congressional control are through the details of statutes, and especially through the minute enumeration of items in appropriation bills. These methods are made use of much more effectively by Congress than by legislative bodies in other countries; and close obedience to the statutes is aided by the system of reports to Congress and investigations into the different branches of administration by congressional committees. But permanent statutes cannot deal with current problems of administration; and even in the field of expenditure, the custom of permanent appropriations for certain lines

[1] U. S. *v.* Klein, 13 Wallace, 128.

of public work is being extended, and to that extent relieving the administration from the control of each particular Congress.

By far the most important limitation on the President's administrative powers is the restricted scope of national powers and national administration. The large powers reserved to the states take out of the control of the national government many administrative services which in other countries are either in the immediate management of the central government, or under its supervision. But in this country, both state and local administration are entirely beyond the powers of the President.

In spite of these limitations the President's powers are of more importance than those possessed by the chief executives of most modern governments; and certainly within the sphere of national administration his effective personal authority is of more value than that of most constitutional monarchs of Europe, or even of their prime ministers.

It remains to note briefly the forms of presidential action, and the legal remedies against an unconstitutional exercise of power by the President.

Forms of Presidential Action.—The acts through which the President exercises his powers are of two classes: those laying down general rules affecting numbers of persons under different circumstances; and those of special application to particular individuals. Of the former, three kinds may be noted: Announcements and decisions of the widest interest and broadest scope are issued by proclamations, intended for general circulation. Matters of less importance, but affecting both government officials and private citizens, are dealt with in regulations or rules; while general orders directed mainly or exclusively to government officials are known as instructions. These different forms bear no relation to the sources of presidential authority; but each of them is used in the exercise of different powers. Thus, proclamations are issued by virtue of specific statutory provisions, or in the discharge of constitu-

tional powers, or even for such extra-legal acts as the announcement of the annual Thanksgiving Day. Acts of special application may be,—directions or orders issued to the head of a department; decisions on such appeals as go to the President, or on matters requiring his approval; or commissions appointing persons to office.

Remedies Against the Action of the President.—There seem to be only two legal methods of directly restraining the personal action of the President: the cumbrous process of impeachment, and the negative control exercised by the courts in declining to enforce unconstitutional orders and regulations.

In the case of Marbury *v.* Madison, Chief Justice Marshall pronounced the dictum, that so far as his political or discretionary powers were concerned, no action could be maintained against the President.

"It is scarcely necessary for the court to disclaim all pretensions to such a jurisdiction. An extravagance so absurd and excessive could not have been entertained for a moment. The province of the courts is solely to decide on the rights of individuals, not to inquire how the executive or executive officers perform duties in which they have a discretion. Questions in their nature political, or which are by the constitution and laws submitted to the executive, can never be made in this court."[1]

"The executive power is vested in a President, and as far as his powers are derived from the constitution, he is beyond the reach of any other department, except in the mode prescribed by the constitution through the impeaching power."[2]

No case has yet arisen where the courts have attempted to control the acts of the President where this would bring them into direct conflict with him. The Supreme Court has refused to consider the question of issuing an injunction against the President to restrain him from enforcing a law alleged to be unconstitutional.[3] And when a writ of *habeas corpus* was opposed by the orders of the President, the court declined to take further action.[4]

[1] 1 Cranch, 170.
[2] Kendall *v.* United States, 12 Peters, 524, 610
[3] Mississippi *v.* Johnson, 4 Wallace, 475.
[4] *Ex parte* Merryman, Taney, 246.

This attitude of the courts is, however, of less significance than might be supposed, owing to the fact that the President acts in large measure through the administrative officials of all grades. Over all such officials, including the heads of departments, the courts freely exercise control.[1] They not only refuse to enforce unconstitutional orders, but also use their more emphatic mandatory and prohibitory powers of administrative jurisdiction. Nor does an unconstitutional or illegal order of the President serve to protect any officer from the judgment of the judiciary.

[1] U. S. *v.* Schurz, 102 U. S. 378.

CHAPTER III

The Senate and Congress

References.—Goodnow: Comparative Administrative Law, I, 102-106; II, 262-302.—Bryce: American Commonwealth, I, 106-110, 208-214, 278-289.—Story: Commentaries on the Constitution, II, 173-279.—Dupriez: Les Ministres, II, 95-117.—De Chambrun: Le Pouvoir Executif dans les Etats Unis, 107-135, 320-345.—*North American Review,* 167:47, 176.—*Forum,* 31:423.—*Atlantic Monthly,* 68:227; 92:433.—*American Law Review,* 28:276.—*Scribner's Magazine,* 34:541.

It is not the purpose of this chapter to discuss the organization and legislative powers of the two houses of Congress, nor to examine in detail their methods of procedure. These are important topics in a study of the constitutional system and the working of political institutions. But the legislative bodies are of interest here only in their direct relations to the national administration; and it is solely in this aspect that they will be considered. This will include an examination of the special executive powers of the Senate, and of the methods by which Congress exercises control over the administration.

THE SENATE AS EXECUTIVE COUNCIL

In the national government of the United States the Senate is at the same time a branch of the legislature and an executive council. In combining these two elements it resembles the German Bundesrath; although its executive functions are distinctly different from those of the German institution, and also different from those of executive councils in other countries. These councils in other countries, while varying widely in organization, agree in having for their principal administrative work the exercise of a large ordinance power, supplementing the statutes of the legislature. Such ordinances are formally

enacted by the British Privy Council and the German Bundesrath; while the detailed work of preparing administrative ordinances form the largest share of the duties of the body of legal experts who compose the French Council of State.

No such ordinance power is conferred on the United States Senate. But in other ways it has important administrative powers, in addition to its share, as one branch of Congress, in the legislative control over the administration. These special administrative powers are clearly distinguished from its legislative functions by a striking difference in procedure. In legislative matters the Senate, like the House of Representatives, holds public sessions; but when exercising these special powers it meets in executive session, with closed doors. Moreover, the Senate may, and often does, sit as an executive council at times when the House of Representatives is not in session.

These special administrative powers of the Senate have already been noted in considering the limitations in some of the President's powers. But it will serve to make clear the position of the Senate if they are grouped together.

In the first place, the Senate has some control over the personnel of the administration by the power of approving or rejecting the nominations of the President to the more important positions in the administrative service. During the *régime* of the Tenure of Office acts, it also was able to control removals; and then could exercise control over the administrative officers in the discharge of their duties; but since the repeal of these acts this power is no longer held. The power of confirming or rejecting appointments is, however, actively used by the Senate. Except in the contest with President Johnson, the President has been left free to choose the members of his cabinet; but for all other officers the Senate exercises its power to reject a nomination on any ground it pleases, while through the development of what is known as the "courtesy of the Senate," the Senators from each state when they belong to the same political party as the President generally control the

nominations to local offices of the national government within their own state.

In the second place, the Senate has the very important power over the approval of treaties. By the constitution, every treaty negotiated by the President must be accepted by two-thirds of the Senators present when the vote is taken before it becomes the law of the land. We have already noted that the preliminary negotiations are conducted under the control of the President subject to no active interference by the Senate. In practice, however, the need for securing the approval of the Senate makes it advisable that on the most important matters the Senate committee on Foreign Affairs be kept informed of the progress of negotiations. There have also been some cases when a formal report of negotiations has been made and the advice of the Senate has been asked for, before the treaty was framed.

When the treaty is arranged by the negotiators, it is transmitted to the Senate with all the documents pertaining to the subject. The matter is then referred to the committee on Foreign Affairs, which makes a careful study of the question. This committee is always composed of the strongest members of the Senate, leaders in both parties, and its membership changes very slowly. Its chairman is next to the President and the Secretary of State the most important factor in the treaty-making power, and may be superior to them owing to his long-continued experience and his influence in the Senate. The committee may kill a treaty by failure to report on it; or it may report favorably, unfavorably, or suggest amendments. When a report is made, the matter comes before the whole Senate for discussion. Generally the report of the committee is adopted,—thus showing the influence of the members, which is sufficient to secure the necessary two-thirds vote for ratification. Frequently, however, this action does not confirm the treaty negotiated by the President. Many treaties have been rejected outright: for example, those annexing San Domingo, purchasing the Danish West Indies, and the arbitration treaty

with Great Britain. Still more common is the adoption of amendments which the Senate names as conditions of its approval.

These executive powers of the Senate are clearly an important exception to the strict application of the theory of the separation of powers. And, indeed, this exception is so evident that it is usual to speak of the Senate as both a legislative and an executive body. To this combination of functions, with the long terms and continuous service of the Senators, has been due, in large measure, the dominance of the Senate in legislation.

CONGRESSIONAL CONTROL

Over and above the special executive powers of the Senate both houses of Congress, acting in their regular method of procedure, exercise a large control over the national administrative services. This is done by means of reports, investigations, the details of statutes, the control of finances, and in extreme cases by the process of impeachment.

In the constitution it is expressly provided that the President "shall from time to time give to the Congress information of the state of the Union." Each year at the beginning of the regular session of Congress he addresses to both houses a message in which he discusses administrative and political matters and expresses his views on proposed legislation. The President's message is accompanied by elaborate reports from each of the heads of the executive departments. The statutes require these department reports to be made, and to present detailed information as to the expenditures for the department, the employees and their services, and in general to give a complete report of the operations of the department for the year past.

In addition to these regular reports, the houses of Congress may make requests to the President or the department secretaries for documents and further information on any special subject. But in this case they do not have the right nor the

means of enforcing an answer. The President may refuse to answer on the strength of his independent position, and the department secretaries will obey the orders of the President. These requests for information are made not by individual members, but in the name of one or other house. Any member may, of course, present inquiries at any department office; but these are purely personal affairs which can be refused readily. On a question of some importance on which full details are sought, the member must first propose his request in the House and have it approved there. The request is then transmitted by the appropriate standing committee to the department concerned, which sends the answer (with or without the information) either to the committee or direct to the speaker of the House.

These regular and special reports from the departments to the Congress serve two purposes: they give the houses knowledge of the needs of the country and the administrative services; and they allow Congress to control the administration in the smallest details, by informing the committees of matters which can be regulated and changed by statute.

If either house of Congress wishes to make a more thorough investigation of the conduct of the President or any administrative official, they can appoint an investigation committee, with power to collect documents, to hear witnesses and to invite the department heads before them. But such a committee cannot give orders to a department secretary, nor even insist on their attendance, although in fact they usually appear. The committee can only present questions, which the department head may avoid or even refuse outright to answer; but again, in most cases the answers and information sought for will be given.

These means of control serve, doubtless, to prevent and detect misconduct and malfeasance in office, which might occur if the departments were independent of all supervision. They also at times subject the administrative officials to petty annoyances, can hinder their action, and secure compromises on

questions of detail. But they cannot transfer the control over administrative policy from the President to Congress.

Either house of Congress, or both houses jointly, may pass resolutions calling on the President or the department heads to take certain steps, or disapproving actions that have been taken. But such resolutions have no direct effect on the administration. They do not shorten the term of the President or any officer, nor limit their discretion; and they need not be obeyed or even noticed. The Senate adopted a resolution of censure against President Jackson. But this did not in the least alter his course. Indeed, he vigorously contested its constitutionality, and three years later when he had a majority of the Senate the resolution of censure was expunged from the records.

A more serious restriction on the President and the administrative service is that exercised by the statutes. These, of course, bind the administrative officials in the discharge of their duties; and the statutes enter into such minute detail that they impose important limitations on the powers of officials compared with those in other countries. The elaborate committee organization serves to aid Congress in this work. The houses could not enter into such details on all measures but for the fact that each committee makes a special study of the administration of the bureaus under its supervision, and elaborates the bills governing the bureau to carry out their ideas.

In addition to the control exercised by existing statutes, Congress may enact a law requiring the President or any official to do or to abstain from doing certain acts hitherto left to his free will and judgment. Such a bill might be vetoed by the President; so that it could become law only by a two-thirds vote in each house.

Congress also exercises control over the administration through its control of the finances, in passing revenue and appropriation laws and in auditing expenditures. Financial measures are enacted as statutes in the same manner as other bills. And in framing such bills and adapting them to their

final form, the determining authorities are the finance committees of the two houses, with their chairmen as the most important factors. The proposals of the departments are never more than a basis for the measures as passed; and often the statutes bear little resemblance to the original proposals.

Each successive Congress does not exercise its control over revenues to the fullest extent possible. In Great Britain and other countries some of the important revenue laws are enacted only for one year at a time, and must be renewed annually. In the United States national government, however, customs duties, internal revenue taxes, post-office receipts, and, in fact, all of the revenues are collected under standing laws, which remain in force until altered. If no positive action is taken by Congress the revenue will continue to be collected as prescribed in laws passed previously.

More direct and continuous control is exercised by means of the appropriation bills. By withholding supplies Congress can check any plan favored by the President which requires the expenditure of money; and as appropriations are made in great detail, it can, by reducing the grant for any particular bureau, limit its activities or even cause its practical abandonment. This was done with the first Civil Service Commission, appointed by President Grant; and numerous unsuccessful attempts have been made to repeat this action with the present commission. So, too, by cutting off army appropriations any attempt on the part of the President grossly to abuse his control of the army might be limited. And, as has been noted, the House of Representatives might negative the execution of a treaty confirmed by the Senate by refusing to make an appropriation.

Positive control is exercised by making appropriations for items not in the department estimates, or even in the face of the open disapproval of the department concerned. This has often been done in connection with river and harbor improvements, and also in requiring the department of Agriculture to continue the free distribution of seeds.

Important branches of the national administration are, however, relieved from the detailed control of each succeeding Congress by the system of permanent appropriations. The salary of the President and of the United States judges have always been secured from frequent changes by the constitutional provision that they may not be reduced during the term for which any of these officers are chosen. Payments for interest and principal of the national debt are provided for by permanent statutes; and also for the customs service, and, in recent years, for some river and harbor works. Under acts of 1878 and 1890 the purchase of silver bullion as a basis for currency was required, until the repeal of the latter in 1893. Moreover, by the decisions of the Supreme Court, naming a fixed salary for an office is regarded much as a permanent appropriation;[1] although in this case a suit would have to be brought in the Court of Claims, and in case of judgment the amount could be collected only from the appropriation for the payment of private claims.

But the control which can be exercised in these ways is limited. It is impossible by any of these means to compel the President to act as Congress wishes in a matter that is within the constitutional powers of the President. Thus, when President Buchanan declined to use the army against the seceding states, Congress could do nothing.

In England the system of ministerial responsibility was developed from the power of the House of Commons over the purse; by its refusal to vote supplies to a ministry which would not carry out its wishes. But that course is not possible in this country. To withhold the appropriations and thus stop the machinery of government would injure the country and the members of Congress far more than the President. They cannot refuse to vote the salary to the President, for that is guaranteed to him by the constitution. The attempt has, however, been made to use the money power of Congress to coerce the President in another way; by attaching as "riders" to the

[1] U. S. *v.* Langston, 118 U. S. 389.

appropriation bills, items of general legislation which the President would veto if presented as separate bills. But in 1879 President Hayes vetoed appropriation bills to which riders were attached; and threw the responsibility back on Congress, so that they were compelled to repass the appropriations without the riders.

Congress also confirms its control over appropriations by examining the accounts of the various departments. Each department submits full financial reports to Congress at the end of the year; while the Secretary of the Treasury reports on the entire receipts and expenditures for the preceding year. The rules of the House of Representatives provide that such accounts go to the Speaker, and are submitted by him to the House. The various accounts are then referred to one or other of the standing committees on expenditure, which examine them as to their conformity to the appropriation laws, their justness and correctness, the accountability of public officers, and the possibility of retrenchment. Each committee reports to the house on the accounts referred to it.

There remains as the final method of congressional control over the administration the process of impeachment. Under the constitution an impeachment trial can be held of the President, Vice-President, or any of the executive or judicial officers of the national government. The House of Representatives presents the indictment; and the Senate acts as a court, a vote of two-thirds being necessary to convict. This procedure was adapted from England, where the method has gone out of use since the establishment of cabinet responsibility to the House of Commons.

There have been many and vigorous discussions as to what are proper grounds for impeachment. The constitution names "treason, bribery or other high crimes and misdemeanors" as the causes. It has been argued that these words are not to be taken in their technical legal sense, which would limit such trials to acts which national laws expressly declared to be felonies and misdemeanors; but it is also held by some that the

words are to be taken in a more general sense. Congress has adopted this interpretation; and none of the impeachment trials have been based on the violation of a statute. Two judges have been convicted: one for treason, one for drunkenness. In the trial of President Johnson the argument that he was not guilty of any statutory crime was urged in his defense and seems to have weighed in securing his acquittal.

The only penalty that can be imposed on conviction in an impeachment trial is removal from office; but this is enough to establish the control of Congress over the officers. Persons convicted by impeachment would afterwards be subject to trial and punishment by the ordinary courts.

If impeachments are limited only to statutory crimes, it is obvious that they provide no means for any control over the administration in the ordinary discharge of its duties. But even if the larger scope of grounds for impeachment be taken, it is still a difficult and cumbersome process which can be used only on rare occasions. Indictment by the House is difficult to secure, and conviction by two-thirds of the Senate is almost impossible. As Mr. Bryce says:

"Impeachment is the heaviest piece of artillery in the congressional arsenal, but because it is so heavy it is unfit for ordinary use. It is like a hundred-ton gun which needs complex machinery to bring it into position, an enormous charge of powder to fire it, and a large mark to aim at. It is an extreme remedy, proper to be applied against an official guilty of political crimes, but ill-adapted for the punishment of small transgressions."

Effective congressional control is thus that secured by detailed statutes and appropriations, in framing which Congress is aided by its committees and the reports required from administrative officials.

CHAPTER IV

The Cabinet and its Members

References.—Bryce: The American Commonwealth, I, 86-96, 277-297.—Goodnow: Comparative Administrative Law, I, 127-161.—Guggenheimer: Development of the Executive Departments, in Jameson: Essays in Constitutional History, 116-185.—Burgess: Political Science, II, 263, 311-317.—H. J. Ford: American Politics, 383-396.—A. L. Lowell: Essays on Government, No. 1.—J. I. C. Hare: American Constitutional Law, I, lecture 10.—Dupriez: Les Ministres, II, 42-52, 68-95, 150-164.—F. Snow: In *American Historical Association Reports,* 4:309; in *Annals Amer. Acad. Soc. and Pol. Sci.,* 3:1.—*Congressional Directory,* December, 1904, 257-290.—*Atlantic Monthly,* 50:95.—*North American Review,* 111:330.—*American Law Review,* 23:280-282.—*Yale Law Journal,* 7:1-19.—*Magazine of American History,* 23:386.

In the discharge of his administrative functions the President is assisted by a group of advisers known as the Cabinet, which has some resemblances and some points of difference to the cabinets in other governments. As is the general rule elsewhere, the President's Cabinet is composed of the heads of the principal executive departments, into which the national administration is organized. Like the British cabinet, it has no legal existence as a collective body. But, unlike the cabinets in countries having the parliamentary system of government, neither the Cabinet as a whole nor the individual members, in the United States, are politically responsible for the acts of the chief executive. The President has full authority and sole responsibility; and his Cabinet is simply a consultative and advisory body to him, without any effective control over legislation. This situation is indicated by the fact that the members of the President's Cabinet are generally called

secretaries, instead of the more dignified title of ministers, which is used in most other countries.

ORGANIZATION

While the Cabinet as a body has no formal legal existence, its membership is in fact determined by the number of executive departments in the national administration. These departments have been created by congressional statutes, which regulate strictly their jurisdiction and powers. The constitution does not expressly provide what authority shall have this power of organizing the departments; indeed it does not specifically direct the creation of such departments, although it recognizes their existence in two places. It permits the President to require the opinion in writing of the heads of the executive departments; and it provides that Congress may vest the power of appointing inferior officers in the heads of such departments. The last cited clause speaks of "offices established by law," and this has been interpreted as giving to the legislature the organizing power. Moreover, not only are the departments in their main features created and established by Congress; but also their internal organization, and the powers and duties of the various heads of sub-divisions are often regulated in detail by statute. Only rarely does a statute provide that the head of a department shall organize any particular sub-division.

In other countries the internal organization of the departments, and in continental Europe even the principal departments, are established by executive order. This system has the advantage of flexibility, since it permits frequent changes to be made quickly to meet new conditions. The rigidity of an organization fixed by statute is not always conducive to economic or efficient administration. An illustration of this may be noted in the creation by statute of districts for the collection of customs duties. The districts as they now exist were established many years ago, and some of the ports formerly of importance have sunk into insignificance with changes in the lines of foreign trade. Secretaries of the Treasury have repeatedly

reported this situation to Congress and recommended the abolition of the less important districts. But Congress has failed to act on these recommendations, probably on account of the opposition of the members from the sections affected. Such matters could with advantage be left to administrative regulation; while the legislative control over finances would effectively check any tendency to extravagance which might be feared from the administrative officers.

In 1789 when the constitution was first put into operation three executive departments were created by Congress: State, Treasury and War, and in addition there was established the office of Attorney-General, who ranked from the first with the heads of the departments. Since that time five additional executive departments have been successively formed—the Navy in 1798, the Post-Office in 1829, the Interior in 1849, Agriculture in 1889, and Commerce and Labor in 1903—while the Attorney-General's office has been developed into the department of Justice. This expansion has been due in part to the development of the older administrative services, some of which have been taken from the original departments and placed under one of the more recent creations; and in part to the establishment and growth of new branches of service. In addition to the nine executive departments, whose heads form the President's Cabinet, there are a few less important bureaus not connected with any of the main departments. Such are the Inter-State Commerce Commission and the Civil Service Commission.

A uniform salary of $8,000 a year is given to each of the heads of the nine principal departments. This is much below the compensation of the ministers at the head of the important departments in the principal foreign countries.

The number of Cabinet members is much smaller in the United States national administration than in other important countries. This is due in part to the federal system of government, which leaves to the states such matters as educational administration, the supervision over local government, and the

regulation of manufacturing industry and of commerce which does not cross state lines. But in some cases services performed by the national government are in this country organized as subordinate bureaus of one of the main departments, which in other countries are in charge of an official of cabinet rank. Such, for example, are the public works and colonies under the Secretary of War.

Department secretaries are appointed by the President, "by and with the advice and consent of the Senate." There have been, however, but a few exceptional cases where the Senate has attempted to exercise any control over the President's selections for these positions; and the power of appointment is practically exercised by the President himself. He is under no compulsion to choose the members of his Cabinet from the political party which controls the Senate, still less from the party which controls the House of Representatives. And each President is free to select his own advisers, without reference to those of his predecessor.

Nevertheless, there are certain customs and limitations observed by the Presidents in their choice. Elected to his position by a political party, the President is confined in the choice of his Cabinet to the members of his own party. Washington attempted to secure a Cabinet with representatives of different political views; but the attempt was not successful. Lincoln selected some men who had been democrats and some who had been whigs; but all had definitely attached themselves to the new republican party. Cleveland in 1893 appointed a former republican as Secretary of State; but he had supported the democratic candidate at the preceding election, and was in no sense a representative of the opposing party.

Several groups of members, chosen on different grounds, may generally be recognized in each Cabinet as finally organized. Some receive their position as party leaders. If there is a well-marked division within the party, there will be some persons closely allied to the President, and usually some representatives of the opposing element. The Secretary of State

has frequently been the strongest rival to the President for the party nomination. Some members are selected largely because of their services in political campaigns, either past or prospective. Occasionally there will be a selection based mainly on administrative qualifications for the special department. And there are usually some persons in the Cabinet chosen by the President mainly on account of personal considerations.

Few of the Cabinet members are taken directly from Congress. Occasionally ex-Senators and ex-members of the House of Representatives are appointed. But a Senator feels that his position in the Senate is more secure if he continues to occupy it; and that the longer tenure with the chance for reëlection makes it a more influential post than that of department secretary for not more than four years. Most of the representatives are not of sufficient calibre for the Cabinet; while the few leaders—who are also usually sure of their seats—prefer the political and legislative work of Congress to the administrative service.

One consideration of considerable weight is the representation of different sections of the country. There is no rule requiring anything like a proportional distribution of the positions; but it is felt to be advisable that each of the large divisions of the country should have a member in the cabinet.

POWERS AND FUNCTIONS

In discussing the powers and functions of the department secretaries, it is necessary to discriminate between (1) their influence as a collective body, (2) the general powers exercised by each individually, and (3) the special functions of the different secretaries.

As a Cabinet.—In their collective capacity the department secretaries are known as the President's Cabinet. But this Cabinet, while in some respects resembling the cabinets in European governments, occupies in fact a very different and much less important place in the government. Like the British cabinet, it is an entirely extra-legal body, authorized neither

by the constitution nor the statutes, nor even by any formal regulation or order of the President. But the British cabinet is at least an informal committee of the Privy Council, one of the oldest features of the British constitution, and is moreover the working part of the Privy Council; while in this country the Cabinet is purely a voluntary association of the heads of the departments.

Not only has the President's Cabinet no legal existence, it has no collective responsibility, and no control over the political and legislative work of Congress. In most European countries the members of the cabinet are the leaders of the majority in the legislature; and are the responsible directors of legislation. In the United States, the members of the Cabinet cannot be members of Congress; and by custom are excluded from speaking in either house, although they frequently appear before congressional committees. It has been proposed to give them seats and the privilege of speaking in Congress without a vote; and this action would doubtless increase their influence in legislation, but so long as they are chosen by the President without reference to the party majority in Congress they could not become the controlling factors.

Even in administrative affairs, the Cabinet as a collective body has no legal control over the President or of any single member. If votes, resolutions or formal recommendations were passed, they would not legally bind the President in the slightest degree. It is a purely advisory body voluntarily consulted by the President; but the latter must himself make the final decision and assume full responsibility for all decisions.[1]

While it is necessary to recognize the less important position of the President's Cabinet as compared with the cabinets in such countries as England, France and Prussia, there is also

[1] A striking illustration of the situation is told of President Lincoln. A proposition made by the President was opposed by every member of the cabinet; but at the conclusion of the discussion Lincoln laconically announced the result: "Seven nays, one aye, the ayes have it." Formal votes are seldom if ever taken.

some danger of underestimating its functions and influence. Thus Mr. Bryce says: "The ministers meet in council, but have comparatively little to settle when they meet; . . . they are a group of heads of departments, whose chief, though he usually consults them separatively, often finds it useful to bring together in one room for a talk about politics or to settle some administrative question which lies on the borderland between the provinces of two ministers."

If this statement fully represented the work of the Cabinet, it would be difficult to understand the necessity for two regular meetings of the Cabinet every week during the greater part of the year. Not merely matters involving more than one department, but most matters of first importance in the field of any department or of presidential action, are considered and discussed; and even in the field of legislation measures that are to be officially recommended or privately urged either by the President or the secretaries are carefully gone over and an administration policy is usually worked out and adopted. In administrative matters, the Cabinet consultations serve not only to avoid conflicting action by the different departments, but also to bring about in large measure a harmonious spirit of coöperation; and in both respects the national administration is much more effective than the disorganized executive machinery in most of the states. In legislative matters, the influence of the Cabinet consultations necessarily depends on the party relations between the President and Congress. When one or both houses of Congress is politically opposed to the President, comparatively little can be accomplished; but when the President's party has a majority in both houses, the administration policy will, unless there are internal party dissensions, have large weight in the legislation enacted.

Individual Powers.—Each head of a department even in his own field is subject to the control and direction of the President. But from the causes which lead to the establishment of the departments this control cannot cover his whole field of action. The departments are created because there is more

work to be done than can be effectively supervised by the President himself; and thus each secretary has a series of administrative powers and duties which they perform largely independent of the President. The constitution provides that Congress may grant to the heads of the departments the power to appoint inferior officials; and many laws have conferred this power, so that the greater mass of offices are filled by the appointment of the heads of the departments. The more important subordinates are, however, appointed by the President and Senate. Under the civil service law of 1883, a great number of minor appointments are restricted to candidates who have qualified themselves by examinations.

It was early laid down by the courts that the power of removal was incident to the power of appointment.[1] So whenever the heads of departments have the appointing power, they have (unless there are express provisions in statute or executive regulation to the contrary) the power of removal also.

Under the earlier conception of a head of a department in England and the United States, he was considered an official at the center of government with powers of appointment and removal, but he was not supposed to direct the actions of the subordinates in his department. The statutes of the legislature entered into the most minute details as to the duties and powers of the subordinate officers, so that the need for central instruction and supervision was not felt. This situation can be illustrated in the national administration by the collectors of customs. Though appointed nominally as subordinates of the Secretary of the Treasury, the law did not recognize that they were subject to his instructions and directions. It was not the practice to regulate their duties by administrative instructions, nor was there any custom of appealing from the decision of a collector to the Secretary of the Treasury.[2] But as the result of a century of development the national adminis-

[1] *Ex parte* Hennen, 13 Peters, 230.

[2] Report of Secretary of Treasury on Collection of Duties, 1888, p. xxxvii; cf. 10 Peters 80, 137.

tration has become centralized in spirit and practice as well as in form. It is now recognized that the department secretaries stand at the head of a hierarchy of officials, with power to reverse or modify on appeal the decisions of inferior officers and to direct them how to act. In particular, the statutes now specifically provide for an appeal from a collector of internal revenue to the Treasury before the aggrieved party has any standing in court;[1] and in the department of the Interior there is a well developed system of appeals from subordinate officials to the secretary.[2] The courts, too, have recognized that the head of a department may change the decision of a subordinate officer.[3]

Still further the heads of departments exercise a delegated ordinance power; and most of the executive regulations are in fact issued by the department concerned. The revised statutes authorize the head of each department "to prescribe regulations, not inconsistent with law, for the government of his department, the conduct of its officers and clerks, the distribution and performance of its business, and the custody, use and preservation of the records, papers and property appertaining to it.[4] Besides this grant to all the heads of departments, special ordinance powers are given to the heads of the particular departments.

This ordinance power is, however, limited to that specifically conferred; and where a regulation is issued not clearly based on legal authority, the courts do not hesitate to declare it void when its legality is contested in suits before them.[5]. But when Congress has delegated the power to issue such regulations, these when issued have the full force of a statute, upon private individuals as well as upon public officials.[6]

[1] *Revised Statutes*, § 3226.
[2] *Ibid.*, § 2273.
[3] 11 *Federal Reporter*, 76.
[4] *Revised Statutes*, § 161; cf. *ibid.* § 2652.
[5] 2 Cranch, 170; 5 Blatchford, 63; 107 U. S. 407.
[6] *Revised Statutes*, § 251; 1 Abbott, U. S. 351; 4 Howard, 80; 100 U. S. 13, 23.

There are no direct remedies against the general acts of the heads of departments: appointments, removals, directions and general ordinances. In the case of special orders, a remedy is to be found in one of the special writs (mandamus, injunction, *certiorari, quo warranto, habeas corpus*), which may be applied for from the Supreme Court of the District of Columbia, and from there appeal lies to the Supreme Court of the United States.[1]

Special Duties.—The Secretary of State has always ranked first among the members of the President's Cabinet; and this position is now legally recognized in the act regulating the succession to the Presidency which makes him succeed immediately after the Vice-President. This rank, however, confers no such influence as that possessed by a prime minister in European countries; but the dignity of the position generally causes it to be given to the strongest man in the Cabinet, who frequently wields considerable influence in the consultations.

His duties fall into three groups: as keeper of the seals and archives, as home secretary, and as secretary for foreign affairs.

As keeper of the seals and archives, his duties are mainly formal. He receives bills and resolutions from Congress; and also proclamations and important commissions from the President, all of which he countersigns and to which he affixes the great seal (department seals are now attached to most minor commissions). He is further charged with publishing the laws of the United States, and guarding the public archives; he preserves the original statutes and resolutions of Congress, presidential proclamations, and treaties made with foreign countries.

As home secretary, he is the medium of communication between the President and state governors, *i. e.*, between the national government and the state governments. His duties in this field are very limited; but so far as they go they correspond to those of a minister of the interior or home secretary in Europe. The principal subjects of such communications are

[1] Marbury *v.* Madison, 1 Cranch, 137; Kendall *v.* U. S., 12 Peters, 524.

applications from state governors for troops to suppress disorder, negotiations with the governors in regard to the raising of troops in time of war, and negotiations in reference to the admission of new states.

In regard to foreign affairs, "he is charged, under the direction of the President, with the duties appertaining to correspondence with the public ministers and the consuls of the United States, and with the representatives of foreign powers accredited to the United States." He countersigns warrants for the extradition of fugitives from justice, issues passports to citizens of the United States and exequaturs to foreign consuls in the United States. In a word, he supervises the relations of the government with foreign governments and protects the persons and interests of American citizens in foreign countries. His conduct of foreign affairs includes the negotiation of commercial treaties, which in most other countries is performed by the minister of commerce. He makes an annual report to Congress on foreign relations, which includes most of the diplomatic correspondence with United States ministers to foreign countries and foreign representatives to the United States. His control over the negotiation of treaties gives him a larger influence in determining questions of policy than any other secretary; although he is still subordinated to the directions of the President, and the treaties are subject to the action of the Senate.

In the early days of the national government the position of Secretary of State was a stepping stone to the Presidency; but there has been no instance of this since Buchanan. The secretaries who have gained the greatest reputation in this office have been John Quincy Adams, Seward and Hay.

The Secretary of the Treasury does not possess the same powers nor occupy the same position as a minister of finance in other governments. "In the countries of Europe the finance minister is above all the director of the financial policy of the government; the general control which he exercises over the administration of the revenues and expenditures of the govern-

ment are, one may say, only incidental in his personal duties. The essentially important side of his functions is the preparation of the budgets, the determination of future expenses, the selection of sources of revenue to be used or maintained; in addition, he has the duty of guarding the financial interests of the state and nation, especially in everything which concerns the monetary market, the organization of credit, and of fiduciary circulation.''[1]

During the first years under the constitution the Secretary of the Treasury in the United States was also in this sense a true finance minister. Hamilton, the first Secretary of the Treasury, was the director and real master of the financial policy of the United States government. Under his direction the credit of the United States was established, and the finances of the new government were placed on a sure foundation. But step by step this side of the functions of the Secretary of the Treasury has decreased. Congress has assumed the same power of initiative over financial legislation as over other legislation, and the Secretary of the Treasury is reduced to the supervision over the administration of the financial and other bureaus in the department of the Treasury.

Control of financial policy belongs in fact to no one; it is divided and sub-divided between various standing committees of the Senate and the House of Representatives, while a few shreds of power are still retained by the Secretary of the Treasury. The latter official is directed to prepare plans for the improvement of the revenue and the support of public credit, and in his reports to Congress to submit estimates on the receipts and expenditures; but these plans and estimates, which in other countries would form the basis of the final budget, and in some countries would practically agree with the budget, have in this country almost no value or influence in the determination of either the expenditures or revenues. The Secretary's estimates of expenditures are systematically ignored, his proposals as to changes in the revenue laws are

[1] Dupriez, *Les Ministres*, II, 153.

hardly taken into consideration. So, too, with all other measures connected with financial policy. The recommendations of the Secretary of the Treasury to guard against the financial dangers of a surplus accumulating in the treasury, on the regulation of banks and paper money have often less influence than those of single members on one of the financial committees of Congress.

The duties of the Secretary of the Treasury correspond, not to those of the British chancellor of the exchequer, but rather to those of the permanent under-secretary of the British Treasury and those of the parliamentary secretary who has control over the patronage. His sole political function is in the selection of the numerous subordinate officials in the various bureaus—the more important offices are filled by the President.

Among the many administrative functions performed in the various bureaus of the Treasury department, the matters which receive the personal attention of the Secretary include: (1) supervision over the collection of customs and internal revenue, especially by the issue of regulations and instructions and the decision of appeals from the local collectors; (2) selection of depositories of public moneys and determination of the amount of the bonds of disbursing officials; (3) prescribing the forms for keeping and reporting accounts, and issuing warrants for money to be paid by the Treasury in pursuance of appropriations made by Congress; (4) making loans by the issue of bonds for the protection of the gold reserve or other purposes; and (5) supervision over the miscellaneous bureaus in the Treasury department.

The most important Secretaries of the Treasury have been Hamilton (1789-1795), Gallatin (1801-1814), Chase (1861-1864), and Sherman (1877-1881).

The Secretary of War, the head of the department of War, is ordinarily selected not from the army, but from civil life. Exceptions to this customary rule have been made in the cases of Secretaries Knox, Grant, Schofield and Sherman; but all of these except Schofield had also large experience in civil life

as well as their military training. This civil character of the Secretary of War is in marked contrast with the custom in European continental countries, where the war minister is always chosen from the highest army officers, and is thus the effective head of the army administration. In Great Britain, however, as in the United States, the secretary for the War department is never a military officer; and the attempt is made to bring the army distinctly under civil control. But in both of these countries there has been constant friction between the civil secretary and the military commander; which it is hoped to obviate in this country through the operation of the new general staff.

Owing to the development of some branches of civil administration in close relation to the army, the Secretary of War is practically also a secretary of public works and a secretary for the colonies. In connection with the army and military affairs, his duties are such as may be assigned by the President. He has immediate supervision over all estimates of appropriations for the expenses of the department and the army, and of all expenditures for the support and transportation of the army and for the civil expenses of the department of War. He has general supervision over the enlistment, lodging, support, instruction and payment of the troops, the distribution of arms and munitions of war, and the construction of fortifications. He issues orders for the movement of troops, prepares nominations for the appointment and promotion of officers and issues commissions to those appointed. He has also supervision over the United States Military Academy at West Point, of the national military cemeteries, and of the publication of the Official Records of the War of the Rebellion.

His duties corresponding to those of a secretary of public works are explained by the fact that the principal public works of the national government have been carried out by the engineer officers of the army. The Secretary of War has thus general charge over all river and harbor improvements, the establishment of harbor lines, and the prevention of obstructions to

navigation, and his approval of the plans and location is necessary for the construction of bridges over navigable waters.

Since the Spanish-American War the Secretary of War has had added to his duties the supervision over the civil administration in the new colonial possessions of the United States; and the officials in the Philippine Islands are under his general direction.

The most noted Secretaries of War have been Stanton, in the time of the Civil War, and Root, who has established the new colonial administration and reorganized the system of army administration.

The Postmaster-General has general supervision over the postal service; and, under the four-year tenure rule which prevails for postmasters, his personal attention is given very largely to questions of patronage connected with the enormous number of appointments. On this account the position is often given to an active party manager, and only occasionally has it been filled by a man with large business experience, such as would be most likely to bring the postal service to the highest state of efficiency.

In a slight degree the Attorney-General corresponds to a European minister of justice. Although he has no power of appointment or any effective control over the judges, he has a general supervision over the executive and administrative officers of the United States courts,—the marshals and district attorneys. He is also the legal adviser of the President and the executive departments; and the attorney for the government or public prosecutor in law suits to which the national government is a party.

The Secretary of the Navy exercises similar functions in relation to the navy as does the Secretary of War in relation to the army. Under the direction of the President, he has general superintendence of construction, manning, armament, equipment and employment of vessels of war and the supervision over the naval service. For this position the custom of making appointments from civil life has been even more

strictly observed than for the head of the department of War; and there are no examples of a naval officer filling the post.

The Secretary of the Interior bears very little resemblance to the ministers of the interior in European countries. These latter are charged specially with the maintenance of internal order, and the supervision over local governments, functions which in this country are for the most part in the domain of the state governments, while the limited range of national authority is exercised by the Secretary of State. The United States Secretary of the Interior has general supervision over a number of heterogeneous bureaus. The most important are those having charge of public lands, Indian affairs, patents, pensions, the geological survey, and educational information. Over the organized territories, however, the Secretary of the Interior has direct oversight.

The Secretary of Agriculture has supervision over various bureaus, most of which are related to the agricultural interests of the country; and in this department all but three of the officers and employees are appointed by the Secretary. His work includes advisory relations to the agricultural experiment stations aided from the national treasury, the control over the import and export of cattle, the preservation and introduction of birds and animals, and the collection and diffusion of information on agricultural matters, in the most comprehensive sense of the term.

The Secretary of Commerce and Labor is charged with promoting the commercial and industrial interests, bringing under general supervision a number of bureaus previously under other departments. His duties comprise the supervision of corporations (except railroads) engaged in inter-state business, the lighthouse service, the coast and geodetic survey, steamboat inspection, jurisdiction over merchant vessels, the administration of the immigration laws, commercial statistics, the census and labor statistics.

CHAPTER V

Administrative Organization

References.—Goodnow: Comparative Administrative Law, I, 38-47, 127-133, 159-161; II, 1-100.—B. Wyman: Principles of the Administrative Law, chs, 5-8.—F. R. Mechem: The Law of Public Offices and Officers.

Before taking up in detail the organization and functions of the various branches of the national administration, some attention may be given to the general principles of administrative organization applied throughout the national system.

In the chapter on the Cabinet it has been seen that the largest units in the national administration are the executive departments. The historical development of the departments and the distribution of functions among them has also been noted, as well as the special duties of the heads of the departments.

All of the departments are further divided into a varying number of bureaus, each charged with some definite branch of the department work. In some cases such branches of a department are classed as offices, commissions, or, if comparatively unimportant, as divisions. Bureaus, like departments, are established by statutes; and the Attorney-General has held that they can be established only by act of Congress, and not by an administrative regulation of the executive.[1]

Bureaus are in turn often further subdivided into units known as divisions, although this term is also applied to some department subdivisions of the higher grade. The functions of divisions may be determined by a system of subject classi-

[1] 10 Atty.-Gen. Opinions, 11.

fication, as in the Patent Office, or simply by a geographical distribution, as in the Pension Bureau.

Corresponding to this hierarchy of departmental subdivisions there is a similar hierarchy of officials. Each department head has one or more principal assistants, usually styled assistant secretaries. These receive salaries from $4,000 to $6,000 a year; and their duties are determined not by statute, but by the assignment of the head of the department, and they may vary from time to time.

A good deal of variety is displayed in the titles given to the chief officers of bureaus. In the more important bureaus they are usually called commissioners; and with these may be ranked the directors, comptrollers and the military and naval officers at the head of the bureaus in the departments of War and the Navy. All of these receive salaries varying from $4,000 to $6,000 a year. The heads of less important bureaus are usually called chiefs of bureaus; and receive salaries from $2,000 to $4,000 a year. All of the bureau heads have definite statutory powers, and they are thus less completely under the control of the department heads than are the assistant secretaries.

Chiefs of divisions receive salaries from $2,000 to $3,000 a year. Each department and bureau has also a chief clerk who has the management of the staff of clerks and office assistants.

In this administrative hierarchy of offices and officers, the general principle has been to place a single official in charge of each office. This rule is strictly observed in the nine Cabinet departments; and is followed for the most part in the subordinate bureaus and divisions. But in a few cases in the latter group, and also in several of the bureaus not attached to the main departments, there are examples of board organization. Such, for example, are the Lighthouse Board, the Inter-State Commerce Commission, and the Civil Service Commission. The single-head *régime* is, however, the dominant characteristic of the national administration; in striking contrast to state and municipal administration in the United States, where the board

system under an immense variety of forms is a marked feature.

In addition to the various officers and employees at the central offices of the departments, bureaus and divisions in Washington, all of the departments and many bureaus have corps of local agents throughout the country. These local officials of the national administration are all appointed either by the President and Senate or by the department secretaries. The United States national administration makes almost no use of state officers, or of officers of the minor local corporations; and in this respect offers a marked contrast to the administrative system of the German federation, where most of the local officials for the conduct of imperial administration are appointed by the state governments. The local agents of the national government are also under the direct supervision and control of their superior officers in the various departments, a supervision exercised by means of administrative regulations and appeals, and made effective by the visits of traveling inspectors or special agents from the central office of each department.

As a result of these methods of appointment and control of local agents the United States national administration is thoroughly centralized within each department, differing to the widest possible extent from the radically decentralized *régime* in state administration in this country. In one respect, however, the organization of the national administration is less completely centralized than that of such a country as France: the various local agents of each department are entirely independent of each other; and there are no district agents of the national government with general powers of supervision over all the local agents, such as the French prefects. There is also no national supervision over state officials or local officials and corporations created by the states.

Appointments to office in the national administration, from the heads of departments to the least important local agent, seem to have been conferred, almost from the beginning of the government, largely on the basis of political allegiance. This patronage system, the fundamental basis for the later develop-

ment of the "spoils system," is an old feature of all governments; and was introduced into the national government from the previously existing methods in the colonies and states. Even Washington laid down the rule that only those friendly to the government ought to receive the offices.[1]

At first appointments were made for no definite term; and were considered as permanent, except in the case of heads of departments. But later the principle of rotation in office was introduced, by the four years' tenure rule and by arbitrary removals for political reasons. The development of these features in reference to presidential offices has already been noted, in connection with the powers of the President,[2] and the situation in reference to less important offices, and even the subordinate class of employees, seems to have followed the same general course. Almost the whole administrative service of the national government came to be used mainly for partisan purposes. Not only were positions given as rewards for campaign service, but they were often given without any reference to ability or competence, and sometimes without reference to common honesty; while efficient and capable servants were displaced to make room for new appointments of this sort.

In 1883 there was established a system of examinations for entrance to some positions; and this has been developed until it includes most of the subordinate employees in the civil service. This system will be examined more closely in connection with the Civil Service Commission, which has it in charge.[3] But it must be noted that the presidential offices and most of the other offices, as distinguished from the employees, in the national administration are not directly affected by these new methods. Local officers, whether formally appointed by the President and Senate or by the head of a department, are in practice usually selected by Senators or Representatives in political harmony with the President; and allegiance either to the party or to the

[1] Lodge, *Historical and Political Essays*, p. 117.
[2] See pp. 4, 14.
[3] See ch. 17.

political interests of the selector is a fundamental requisite, to which qualifications of ability and character are made secondary. In recent years, however, more attention is given than formerly to these secondary qualifications.

It is of some importance to understand clearly the legal nature of an office, and to distinguish, as far as may be, the officers from the employees of the government. An office has been held to be "a public station or employment, conferred by the appointment of government. The term embraces the idea of tenure, duration, emolument and duties."[1] All of these characteristics do not seem to be essential, as, for example, there are unsalaried offices without emolument; but the possession of more than one of them seems to be necessary to constitute an office, and to make the incumbent an officer. "Although an office is an employment, it does not follow that every employment is an office. A man may certainly be employed under a contract express or implied to do an act or to perform a service without becoming an officer."[2] In the United States national administration an officer can only be appointed by the President and Senate, by a court of law, or by the head of a department; and persons in the service of the government who derive their position from other sources are not officers in the sense of the Constitution."[3]

Since public offices are created by law, and in this country are not considered as property,[4] there is no contract between the officer and the government; and the latter may at any time modify the duties of any office; may (except in the cases prohibited in the constitution) change the salary and alter the term of service; or may abolish the office.[5]

Some attention may also be given here to the general char-

[1] U. S. *v.* Hartwell, 6 Wallace, 385.

[2] C. J. Marshall in U. S. *v.* Maurice, 2 Brock (C. C.), 96.

[3] U. S. *v.* Germaine, 99 U. S. 508; U. S. *v.* Mouat, 124 U. S. 303; U. S. *v.* Smith, 124 U. S. 525.

[4] Bank *v.* Okely, 4 Wheaton, 244; Taylor *v.* Beckham, 178 U. S. 548, 576.

[5] Butler *v.* Pennsylvania, 10 Howard, 402; Newton *v.* Com'rs, 100 U. S. 548, 559.

acteristics of the authority of public officers, as distinguished from the specific authority of particular officers discussed in other chapters. The authority conferred may be either ministerial or discretionary. "A ministerial duty . . . is one in respect to which nothing is left to discretion. It is a simple, definite duty, arising under conditions admitted or proved to exist, and imposed by law."[1] Such ministerial duties may be imposed by statute, or, in the case of subordinate officers, by executive regulations or the instructions of superior officials. Discretionary authority is of varying grades. A law may require an officer to act according to his discretion, making the duty to act imperative, but leaving the manner of acting to his judgment. Even in more general grants of discretionary power an officer's discretion is limited, by judicial construction, to the evident purposes of the law, and to what is known as a sound and legal discretion, excluding all arbitrary, capricious, inquisitorial and oppressive proceedings.[2]

Redress for misuse or neglect of official authority may be sought by administrative appeals or by legal proceedings in the judicial courts. In our state governments administrative appeals very seldom exist; but in the centralized national system such appeals from inferior to superior officers are recognized in almost every branch of the administration. These appeals are usually free from the technical procedure of the courts; and in deciding them higher officials usually feel free not only to compel obedience to ministerial duties, but also to overrule unwise decisions of inferior officers within their field of discretionary action.

Judicial proceedings against official action take a variety of forms. For many cases of misfeasance or malfeasance public officers are liable to criminal prosecutions. In other cases a remedy may be sought in a civil suit for damages. While in some matters the courts will issue the special writs of mandamus, injunction, *certiorari, habeas corpus,* and *quo warranto.*

[1] State *v.* Johnson, 4 Wallace, 475, 498.

[2] U. S. *v.* Doherty, 27 Fed. Rep. 790; U. S. *v.* Kirby, 7 Wallace, 486.

In all such cases, however, the judges are much more careful not to attempt to control the legal discretion of officers than are superior administrative officers; and on that account judicial proceedings are not so frequent in the national government, where administrative appeals are freely provided, as in the state governments.

CHAPTER VI

The Department of State

References.—Gaillard Hunt: The Department of State.—W. H. Michael: History of the Department of State.—E. Schuyler: American Diplomacy, chs. 1-3.—A. B. Hart: Actual Government, pp. 430-445.—S. B. Crandall: Treaties, Their Making and Their Enforcement (Columbia University studies in Political Science, Vol. 21).

Diplomatic and Consular Service

Atlantic Monthly, 29:300; 74:241; 85:455, 669.—*North American Review,* 122:309; 156:461; 158:412; 159:711; 162:274; 169:349.—*Political Science Quarterly,* 13:19.—*Century,* 26:306; 38:268.—*Forum,* 4:519; 6:486; 15:163; 22:673; 25:546, 702; 27:24; 30:28; 32:488.—American Historical Association, *Report* for 1898, p. 285.

In the administrative organization of the United States national government, the department of State corresponds most closely to the department of Foreign Affairs in other governments. But the department of State is not exclusively charged with matters pertaining to foreign relations. It has also duties analogous to the keeper of the seal, and still others which correspond in a slight degree to those of a home department or department of the interior in European governments.

The fact that relations with foreign countries were necessary was recognized early in our history. Even before the Revolution several of the colonies maintained representatives in England who interested themselves in securing for their constituents favorable legislation, commercial and otherwise, and secured protection to their fellow citizens who might be traveling abroad. In this character Franklin at one time represented several colonies. With the advent of the Continental Congress the foreign relations of the colonies were entrusted to committees called the Secret Committee of Correspondence and

the Committee of Foreign Affairs. Much of the inefficiency and inadequacy of this method was inherent in the plural organization. It has been demonstrated by experience in most modern countries that a department of foreign affairs, to be effective, must be vested in a single responsible head. The Congress also learned this lesson in time; and in January, 1781, inaugurated measures for the establishment of a department of Foreign Affairs, and in the following August, Robert R. Livingston of New York was chosen as the first Secretary. The office as constituted was, however, the creation of Congress, and it soon became evident that the title, "Secretary of the United States of America for Foreign Affairs," was a misnomer and that the office could be more correctly termed "Secretary of Congress for Foreign Affairs." In 1783 Livingston resigned and John Jay was appointed to succeed him. The latter continued to hold the position until appointed by Washington Chief Justice of the Supreme Court under the constitution.

After the adoption of the constitution, the first Congress quickly established a "Department of Foreign Affairs," but not long afterward changed the designation to the "Department of State," evidently with a view to placing under its supervision matters not concerned with foreign relations. It was then made custodian of the seal of the United States and charged with the promulgation of the laws. Later it was given charge of patents and copyrights, the census, and supervision of the territories. All these latter duties were, however, transferred to the department of the Interior in 1849.

Under the Secretary of State, who has general supervision over the whole work of the department, there are an assistant secretary, a second and a third assistant secretaries, with salaries from $4,000 to $4,500, who are charged with the immediate supervision of all correspondence. A chief clerk has general oversight of the routine business, and the control over the clerks and employees. The work of the department is classified and assigned to six bureaus, each of which has a bureau chief and a force of clerks aggregating sixty in number,

and a few other employees, making a total of ninety persons in the Washington service of the department. This is much the smallest of the departmental services.

The diplomatic bureau has charge of the correspondence with the diplomatic agents of the government, most of which is later published in the volumes of Foreign Relations, which began in 1861. From the rulings laid down in this correspondence, the decisions of the United States courts and the opinions of the attorneys-general, there was prepared in 1886 a Digest of the International Law of the United States, by Francis Wharton, then solicitor of the department.

The consular bureau has charge of the correspondence with consular agents. It also prepares the volume of Consular Regulations, first issued in 1855 and revised from time to time since that date.

The bureau of indexes and archives opens, indexes and registers all correspondence of the department, prepares the annual volume of Foreign Relations, and preserves the official archives of the department.

The bureau of rolls and library has charge of the promulgation and custody of the statutes and treaties of the United States, and of executive proclamations, orders and announcements; and also has the care of the Revolutionary archives, other manuscript papers and the records of international commissions. This bureau also has charge of the department library.

The bureau of accounts has the supervision and record of all moneys received and disbursed by the department, including the accounts of the department staff, of the diplomatic and consular service, and of international indemnities or trust funds. It also has charge of the issue of passports.

The bureau of appointments has charge of applications and recommendations for offices under the department; and also prepares exequaturs and warrants of extradition.

In 1903 the bureau of foreign commerce of the department

of State was transferred to the newly created department of Commerce and Labor.

Besides these permanent bureaus, various special and temporary commissions dealing with international affairs are appointed from time to time, which are connected with the department of State. Such are the Reciprocity Commission, the Louisiana Purchase Exposition Commission, the United States and Mexico Water Boundary Commission, and the International Prison Commission.

The tenure of office in the department of State has been much more permanent than in any other department. This was true of the clerks and bureau chiefs even before the establishment of the civil service examinations; while even the assistant Secretaries of State have usually been selected by promotion and have retained their offices despite political changes in the presidency. William Hunter was assistant Secretary of State for over fifty years. Another assistant Secretary, A. A. Adee, was first appointed to the diplomatic service in 1870, has been in the department of State since 1877, and has held his present position since 1886.

It is not sufficient for the satisfactory management of foreign relations to have a department of foreign affairs, but every organized government has found it necessary to maintain official representatives in other countries. Before the development of postal and telegraphic communication, such agents were absolutely essential to the conduct of any negotiations between two governments; and even under present conditions there are so many matters which can be so much better arranged by personal discussion than by correspondence that the tendency has been to increase rather than to decrease the staff of agents sent abroad.

Such agents are now divided into two distinct branches: the diplomatic service and the consular service; the former dealing with the relations of one government to another, and the latter mainly with the interests of citizens of one or both governments, usually in commercial matters. Like other countries,

the United States has both a diplomatic service and a consular service, both of which must be now examined.

THE DIPLOMATIC SERVICE

During the Middle Ages consular officials often exercised functions now considered as diplomatic. But with the development of diplomacy, special agents were used for the negotiation of treaties, and gradually the present system of diplomatic officials was established. For some time there was no general custom determining the rank and authority of different diplomatic agents; but the Congress of Vienna in 1815 adopted certain rules, which, as amended in 1818, have been followed in all other countries and have been formally accepted by the United States.[1] Under these rules, there are now four classes of diplomatic agents, ranking as follows: First, ambassadors, legates, or nuncios; second, envoys, or ministers plenipotentiary; third, ministers resident; and fourth, *chargés d'affaires*. The first three classes of agents are accredited to the chief executive of a foreign government; the fourth class are accredited only to the minister or secretary of foreign affairs. Formerly ambassadors were considered as the personal representatives of the chief executive and had the special right to conduct negotiations in person with the chief executive of the country to which they were accredited. But in recent practice, all official negotiations are carried on through the minister of foreign affairs, and ambassadors differ from other ministers only in rank and social precedence.

The first American diplomatic agent was Silas Deane, sent in 1776 as an envoy of the revolting colonies to secure assistance from France. Later Franklin and others were also sent as temporary envoys; and after the capture of Yorktown, Jay, Adams, Franklin and Laurens were appointed agents to negotiate the treaty of peace. The first permanent envoy was Thomas Jefferson, Minister to France during the latter years of the Confederation. Even after the establishment of the gov-

[1] Schuyler, *American Diplomacy*, 107.

ernment under the constitution, the diplomatic service developed slowly. In 1790 a *chargé d'affaires* was sent to Spain, and in 1792 a minister to Great Britain. The first minister to Russia was John Quincy Adams in 1809; and none was sent to Austria-Hungary until 1838. By 1886 there were in the diplomatic service of the United States fifteen envoys extraordinary and ministers plenipotentiary, sixteen ministers resident, one *chargé d'affaires* and one diplomatic agent. Opposition to official recognition to social distinctions prevented the creation of ambassadors, to the advantage of our representatives in the principal countries in Europe; but in 1893 the highest class of diplomatic offices was established.

At present the United States has seven ambassadors—to Great Britain, France, Germany, Russia, Italy, Austria-Hungary and Mexico—each of these countries sending an ambassador to the United States. There are further envoys extraordinary and ministers plenipotentiary accredited to thirty-four governments, and also one minister resident, two diplomatic agents and one *chargé d'affaires.* Among these, however, six officials are accredited to more than one government. One man serves as envoy to Greece, Roumania and Servia; and at the same time is diplomatic agent at Bulgaria. Thus the forty-five posts are filled by thirty-six officers. These officers give the United States a diplomatic representative to every government of Europe, except Montenegro and some almost infinitesimal states, to every American government and to those governments of Asia and Africa with which the United States has any relations.

Most of the diplomatic agencies have, in addition to the principal officer, one or more secretaries of legation, who may also act as *chargé d'affaires* in the absence of the minister. The most important offices have three secretaries; a number of others have two; and there are all together fifty-one secretaries at thirty-six agencies. At the most important agencies there is a military or naval officer assigned as an attaché; and in some cases both a military and naval attaché. In China there are

eight student interpreters; and in each of the five other Asiatic countries to which we send a minister there is an interpreter. The total number of persons in the diplomatic service is one hundred and seventeen.

Besides the permanent diplomatic service, special commissioners are often appointed to negotiate a treaty or for some other particular purpose. Such were the delegates to The Hague conference on arbitration, and the members of the recent Alaskan boundary commission.

The diplomatic officials are appointed by the President with the advice and consent of the Senate. No special qualifications are formally required, either as to their command of foreign languages or their acquaintance with international law and diplomatic usages. After appointment a minister is allowed not more than thirty days with salary to acquaint himself with the instructions of the department of State. Appointments are for no fixed term; but after a change in party control of the presidency there is an almost complete change made at once in the personnel of the diplomatic service; while even apart from any political change the tenure of diplomatic officials is seldom more than a few years. The only case of a United States minister to an important country serving for a long period is George P. Marsh, who was minister to Italy from 1861 to 1882.

Of the thirty-six diplomatic agents of the United States in office in September, 1903, twenty-five had first entered the service after March, 1897; while of the eleven first appointed before that date, seven had been out of office for some time after their first appointment. Only four of these officials had been first appointed under a democratic administration; and only one began his diplomatic career earlier than 1890. The single exception is W. W. Thomas, minister to Sweden, who was first appointed to that post in 1883, was retired in 1885, reappointed in 1889, again retired in 1894, and reappointed for the third time in 1897.

No more permanent are the secretaries of legation. Forty-two out of the fifty-one began their diplomatic service after

March, 1897; while five of the other nine had been retired for some years between their first appointment and their present commission. Only five of the total number were first appointed under a democratic administration; and only three entered the service before 1890. Henry Vignaud, now secretary of the legation at Paris, has been continuously in the diplomatic service since 1875. Henry White, secretary of legation at London, was first appointed in 1883, but was retired from 1893 to 1897; and Richard R. Neill has been secretary of legation at Lima, Peru, since 1884.[1]

Under President Roosevelt, some steps have been taken towards giving the diplomatic service a more permanent basis. Recent vacancies in the higher posts have been filled by transfer and promotion from less important positions in the service. But in the event of another party change in the presidency the fact that the diplomatic offices are now filled almost entirely by one party would no doubt be made an excuse for a new set of appointees.

In other countries the diplomatic service is considered a special and permanent career. Entrance to it requires knowledge of both French and English, and often of other languages, while in France at least a period of special training in international law and diplomacy is also demanded. Diplomatic agents are frequently changed from place to place,—Lord Pauncefote's service of fourteen years as British ambassador at Washington was very exceptional. But in all important European countries changes do not ordinarily mean removal from the service, but transfer from one country to another, usually by way of promotion to fill vacancies caused by death or retirement.

In spite of the inefficient methods of recruiting and maintaining the diplomatic service, the most important places have usually been filled by men of character and ability. A number of ministers to foreign countries later became Presidents, as John Adams, Jefferson, Monroe, John Quincy Adams, Van

[1] Cf. *Summary of Finance and Commerce*, September, 1903.

Buren and Buchanan. Others have been important Cabinet secretaries, as Gallatin, Bancroft, Cass, Bayard and Hay. Many of the best known American authors have also filled important diplomatic posts, and their life abroad has added to the value of American literature, but it may be doubted whether these appointments have been most effective in diplomatic negotiations. There can also be little question that our diplomatic service can be made much stronger if the posts were filled by men versed in diplomatic affairs rather than by those who secure the places simply for the sake of the salary or for a few years' vacation in a foreign country.

Salaries and allowances to United States ministers are much below those paid by other governments. They range from $17,500 to $4,000; while the large European powers pay their principal ambassadors from $40,000 to $50,000, and in addition maintain a legation house. An American ambassador must spend a great deal more than his salary to maintain the dignity of his position. Secretaries of legation receive from $1,600 to $2,625, and the low maximum may well have something to do with the frequent changes of personnel in this branch of the service.

THE CONSULAR SERVICE

The origin of the consular service of modern governments can be traced to commercial magistrates of ancient times having jurisdiction over seamen, vessels and merchandise. The modern system, however, may be said to begin with the establishment of commercial agents in the East by the Italian merchants during the revival of commerce which accompanied and followed the crusades; and the old Roman title of consul, which had descended to the municipal magistrates of the south European towns, was easily transferred to the new officials. The right of appointing these consuls soon passed from the merchants to the governments of the Italian cities. The Hansa towns, England and later France inaugurated a similar system, which has now become general in all civilized governments.

As early as 1780 a consul to France was appointed by the Continental Congress;[1] and after the establishment of the new government under the constitution, Washington appointed a number of consuls without any statutory organization of the service.. In 1792 Congress passed a law recognizing the service and imposing certain duties on consular officers. The service continued to develop without any systematic regulation until 1856. An act of that year fixed salaries and prohibited the consuls at important posts from engaging in trade on their own account. In 1864 a body of consular clerks was established, with the intention of recruiting the service from their ranks; but this intention has never been effectively carried out.

At the present time (1903) the United States has 324 consular offices in all parts of the world; and about 750 persons employed in the consular service. The consular offices are grouped in three schedules: schedule B includes the offices whose incumbents are salaried and are not permitted to engage in trade, of which there are 48 consulates general, 210 consulates and 10 commercial agencies; schedule C includes 8 consulates and commercial agencies, whose incumbents receive small fixed salaries, but are at the same time allowed to engage in business; and the third schedule includes 34 consulates and 20 commercial agencies, whose incumbents are paid altogether by fees and are allowed to engage in business.

There are ten grades of consular officers, ranking in the following order: Consuls general, vice consuls general, deputy consuls general, consuls, vice consuls, deputy consuls, commercial agents, vice commercial agents, deputy commercial agents and consular agents. There are also, in subordinate positions, consular clerks, interpreters, marshals and clerks at consulates. Some of the consular officers in the United States service occupy somewhat different positions from that occupied by officials of other countries with the same title. Consuls general, who are sent to the capital of each country, are not merely higher in rank, but have a general supervision over all other

[1] *Political Science Quarterly*, XIII, 27.

consular officers in the country. Vice and deputy consuls are seldom placed in charge of an independent office; but are usually assigned to offices in charge of a consul, and are for the most part honorary positions with no salaries. Commercial agents are often appointed to posts where other governments appoint a vice consul or deputy consul and the inferior title of the American official sometimes acts as a handicap.

The functions of consuls are of a varied and miscellaneous character, which demand for their successful performance a wide range of ability and experience. While most of their time is taken up with questions concerning individual American citizens, they have also certain duties as agents of the national government. To some extent they are charged with watching the execution of treaties, particularly those conferring rights and privileges on American citizens, and must report any infringement of such treaties. They also observe and report the movement of naval forces on the coast near the port at which they are stationed. In time of war these duties become of increased importance, whether in protecting the rights of Americans as neutrals, or in preventing assistance being given to an enemy of the United States. They may also be called on to purchase coal and other supplies for the United States as an aid to military or naval operations.

In peaceful times and in most civilized countries, the consuls act for the most part as commercial officials. They give aid and advice to the merchant vessels of the United States and to American seamen in distress, assisting many of the latter to return to the United States. They settle disputes between captains and seamen and investigate shipwrecks of American vessels. They must also keep informed of developments in commerce and manufactures within their district, and report on conditions which may affect the commercial opportunities of the United States. American consuls have laid on them the special duty of verifying invoices of goods shipped to the United States and inspecting the manifests of vessels bound to this country, as a means of enforcing the tariff laws.

Closely related to these commercial functions is the duty of reporting on epidemic diseases or other sanitary conditions which might lead to the introduction of some contagious disease into the United States.

Consuls are also to no little extent judicial officers. Everywhere they act as probate judges and public administrators on the estates of deceased Americans leaving property within their district. At all ports, too, they exercise a sort of police jurisdiction over offenses committed on American vessels on the high seas. In most of the Asiatic countries their judicial powers are much more extensive. By treaties with China, Turkey and the other Eastern powers, American consuls have a general criminal jurisdiction over United States citizens charged with committing crime in these countries, and also a civil jurisdiction in cases where a United States citizen is a party to a suit. In these countries, consuls also perform marriages and grant divorces. These special judicial powers in Eastern countries are similar to those possessed by consuls of the European governments; but the American consular jurisdiction and procedure is not well systematized. The only appeals provided for are from the consular courts in China to the United States Circuit Court in California.

Besides the duties imposed by statutes and regulations, consuls are called on for various social functions. They are expected to welcome American travelers, to assist those in any distress, and to give special attention to the more distinguished visitors. They have also social duties towards the local officials and important residents of their district, which if creditably performed may serve to add greatly to their influence as commercial officials.

Consuls at all the more important posts receive fixed salaries, ranging from $1,000 to $5,000, but there are only a few posts where the salary is over $3,500, as at London, Liverpool, Paris, Berlin, Melbourne, Calcutta, Rio de Janeiro, Mexico and Yokohama. The maximum salaries are much smaller than those paid by the other important commercial nations, which

pay their principal consuls from $10,000 to $15,000 a year. But the American consuls also receive certain fees, which at some posts add very materially to their income. At London the fees add $35,000 a year, and at Paris $20,000. What are known as official fees go directly to the government; but there are also notarial fees and other payments received by the consuls for special services to private individuals,—such as administering an estate,—which they retain. The unsalaried consular officers retain official as well as unofficial fees, and are paid altogether in this way.

Consuls are appointed by the President and Senate, and places of financial importance have in most cases been given as rewards for party services. Before 1895 there were no qualifications or restrictions whatever; but in that year President Cleveland issued an executive order, which marks the first step in the direction of a more efficient service. This order provided that consulates paying salaries between $1,000 and $2,500 should be filled in one of three ways: first, by transfer or promotion from other positions under the department of State; second, by the reappointment of a person who had been in the service at some previous time; and third, by appointment after an examination of candidates held by the department of State. But the examination is neither competitive nor open to all comers; the President selects the candidates and there is usually no competition. Hence the examination is but a mere formality, although opening a way for the future development of an effective system. Appointments to more important posts by promotions from the lower posts have been more frequent during the last few years.

No definite term is fixed for consular officers, but, as in the diplomatic service, every party change in the presidential office is followed by sweeping changes in the personnel of the consular service, substituting inexperienced and often incompetent officers for those who have gained some knowledge of and practice in their duties. At first sight, the records of the staff now in office (1903) seem to indicate a much larger pro-

portion of officers who have been in the service for a considerable time than is the case in the diplomatic service. There are nearly 200 consular officials whose first appointment was made before 1897. But closer examination shows that these are mostly officers in the unprofitable positions of vice and deputy consuls and commercial agents; while the posts which pay a comfortable salary have for the most part been filled since 1897.

Some of the exceptional cases may be noted. Perhaps the most significant is that of Consul-General Mason at Berlin, who was appointed as consul at Basel in 1880, has since served at Marseilles and Frankfort, and finally was promoted to his present post in 1898. He is the only consular officer with a salary of over $3,500 whose first appointment was made before 1897. Consul Fowler at Chefoo, a $3,000 post, entered the service in 1890; Consul Roosevelt at Brussels has been in the service since 1878; the consul at Nassau, N. P., was appointed in 1877; the consul at Maracaibo has been at that post since 1878; the consul at Bristol first entered the service in 1882; and the consul at Messina in 1889. But as yet such cases are notable exceptions, which illustrate what should become the general rule.

A small group of permanent attachés of the consular service are the consular clerks, authorized by the statute of 1864. These may be removed only for cause reported to Congress. Several of these clerks also hold honorary positions as vice-consuls, but the original purpose of using these posts as a means of training experts for the important salaried posts has never been fulfilled.

In other countries, the consular service, like the diplomatic service, is considered a permanent career, entrance to which is secured only after giving proof of special qualifications for the duties to be performed. In France the whole service is effectively guarded against incompetent officials. In Great Britain some qualifications are required from all appointees; and for the service in Eastern countries a rigid system of special train-

ing is insisted on, with particular reference to the judicial duties so important at these posts.

One feature of the American methods which has been criticized is the custom of appointing naturalized citizens as consuls to the country of their birth. This probably has the one advantage of securing some officials who can speak the language of the country to which they go. But it often happens that these naturalized Americans are unsuited to act effectively as the representatives of the United States in such communities, owing to their former political or social relations.

Various attempts have been made to secure a reorganization of the consular service, both from within the government and from mercantile organizations interested in an efficient service. But as yet these attempts have failed of success.

CHAPTER VII

The Department of the Treasury—I

References.—D. R. Dewey: Financial History of the United States, ch. 21.—H. C. Adams: The Science of Finance, pp. 194-201.—Robert Mayo: The Treasury Department and Its Various Fiscal Bureaus (1847).—*Harper's Monthly*, 44:481.—*Scribner's Magazine*, 5:657; 33:400.—*Cosmopolitan*, 25:355.—Senate Reports, 1888, No. 507 (50th Congress, 1st session), Vols. 1-3.

Customs Administration

Customs Regulations of the United States.—J. D. Goss: The History of Tariff Administration in the United States (Columbia University Studies in Political Science, Vol. 1).—A. S. Bolles: The Financial History of the United States, II, 486-501; III, 489-522.—*Political Science Quarterly*, 1:36; 2:265; 13:273.—*North American Review*, 158:222.—*American Social Science Journal*, 9:132.—*American Law Review*, 2:653.—*Harper's Monthly*, 69:38; 73:909.—*Forum*, 29:54.—*Journal of Political Economy*, 3:39.—*Cassier's Magazine*, 15:373.—*United Service*, 2:454, 579; 3:38-380.

Internal Revenue Administration

F. C. Howe: Taxation and Taxes in the United States, ch. 7.—*Senate Executive Documents*, 37th Congress, 3d session, No. 20.—*House Reports*, 49th Congress, 1st session, Vol. 11, No. 3209.—*American Law Review*, 2:240.—*Chautauquan*, 16:288.

In the main the department of the Treasury has to do with the finances of the government and the government control over the currency; but in the past many other matters in no ways related to either of these have been assigned to this department, and a few miscellaneous bureaus of this sort are still attached to it. Before taking up in detail the different services connected with this department, it will be of interest to trace the beginnings of a financial system during the Revolutionary War and the development of the department as a whole since the adoption of the constitution.

In this most difficult branch of government, the administration of finances, the colonies had had only the most primitive experience, and had never required any elaborate organization of officials. When, in 1775, the Continental Congress found itself with $3,000,000 in promises to pay, it appointed in July of that year two treasurers to receive, safeguard and pay out the funds for the prosecution of the war. In September of the same year a committee of claims was established to examine and report on claims against the Congress. These preliminary measures were followed on February 17, 1776, by the formation of the germ of the Treasury department. A standing committee of five members of Congress was appointed to superintend the minor officials and also to act as a modern committee on ways and means. On April 1, 1776, a new office was established—the Treasury office of accounts—with an auditor-general at its head, to examine and audit accounts. Disputed bills continued for a short time to go to the committee on claims, but in July their work was turned over to the Treasury board.

With the increase of financial business caused by enlarged military operations and the borrowing of funds, additional machinery was required; and special committees were frequently appointed to assist the Treasury officials, and changes were also made in the membership of the Treasury board. In August, 1778, a standing committee on finance was established, of which Robert Morris was made chairman. On September 26, 1778, the entire system was remodeled. Provision was made for a comptroller, auditor, treasurer and two chambers of accounts of three members each—all these officials to be appointed annually by Congress. The Treasury office of accounts was superseded by these new officials, but the Treasury board was retained. July 30, 1779, the Treasury board was reorganized, the new board consisting of two delegates in Congress and three commissioners not members, all to be chosen annually by Congress.

This system of boards, which had been adopted not only for

the financial administration, but for all the other administrative divisions—the army, the navy, and foreign affairs—was probably adapted from the existing British authorities. All of the boards or committees were constantly shifting in membership, while petty jealousies and local prejudices hindered and opposed action, so that even where decisive action was most essential there was only hesitancy and delay. There were constant complaints against the several boards and several investigations; the demand for an improved system became general, and after long discussion early in 1781 provision was made for single heads for the four most important departments of Foreign Affairs, Finance, the Army, and the Navy.

On February 20, 1781, Robert Morris was elected Superintendent of Finances, and in September of that year, a new plan being arranged, the old Treasury board went out of existence, and other offices in the previous financial system were replaced by a comptroller, treasurer, register, auditors and clerks. The failure of the attempt to establish a system of taxation led to Morris' resignation (November, 1784); and on this a new Treasury board of three members was constituted, which continued in existence during the remaining years of the Confederation. During all of this period there were no taxes levied by the Congress, and no local machinery of assessors and collectors under the control of the central government. The funds of Congress were those received by loans and on requisitions on the states. The latter had complete control of all the machinery of tax administration for both direct and indirect taxes.

In the first Congress under the constitution there was some attempt to continue the board system for the Finance department; but this was not successful, and a single Secretary of the Treasury was provided, with subordinate officers similar to those which had existed under the Articles of Confederation. But in the act organizing the Treasury department there were significant omissions of the qualifying word "executive," and of all reference to the dependence of the Secretary of the Treas-

ury upon the President. It seems evident that the object of this was to make the Secretary of the Treasury more dependent on Congress; but the action of President Jackson in the removal of the deposits in 1833 established the President's authority over this officer as fully as over any other.

Under Hamilton, the first Secretary of the Treasury, a system of customs taxation with a corps of national customs officials was established in 1789. In 1792 internal taxes were laid by the national government; and for their administration a staff of internal revenue collectors under the general control of a commissioner of the revenue was established. This internal revenue service disappeared with the abolition of internal taxes in 1802; it was reëstablished in 1813, again abolished in 1817, and once more reëstablished in 1862.

Originally the Post-Office constituted a bureau in the Treasury department, and it remained in this relation until established as a separate department in 1829. In 1812 a general land office was created in the Treasury department, where it continued until transferred to the new department of the Interior in 1849. In 1846 the independent Treasury was definitively organized. In 1862 the office of the comptroller of the currency was established in the department of the Treasury, in connection with the new system of national banks then authorized. Besides changes and reorganizations within the various bureaus and offices mentioned, other bureaus and subdivisions were created in the Treasury department from time to time, many of which had no special relation to finance administration. The Treasury department seemed to be a sort of dumping ground for any bureau which did not clearly belong to one of the existing departments. Many of these non-financial bureaus dealt with commercial interests, and when in 1903 a department of Commerce and Labor was established, most of them were transferred to that department.

Even after these recent transfers the scope of the Treasury department is still wide and varied, and its internal organization more complex than that of any other department. The

general scope of its functions may be indicated by the following outline of the order in which the different branches will be discussed.

1. The office of the Secretary of the Treasury, including the three assistant secretaries and their immediate subordinates;
2. Revenue administration, including the customs service and the internal revenue service;
3. The treasury, in the stricter sense of the word;
4. Auditing and accounting bureaus;
5. Currency and banking bureaus; and
6. Miscellaneous bureaus, including the life saving service, the public health and marine hospital service, the supervising architect and the bureau of engraving and printing.

While all of these branches of the national administration are organized within the department of the Treasury, there is a wide variety in the degree of active supervision exercised over different services by the chief officers of the department. The various services may be roughly grouped into three classes, from this point of view. In one group may be placed those special services whose chief officers are almost independent of the Secretary of the Treasury. This includes the Comptroller of the Treasury, the Commissioner of Internal Revenue, the Treasurer of the United States, and the Comptroller of the Currency. In a second group may be placed the miscellaneous non-financial bureaus, the heads of which, while acting in a large measure independently, are still under the general supervision of the Secretary of the Treasury, and the three assistant secretaries. In the third group are the services most closely controlled by the highest officials of the Treasury department, the special official assigned to each of these services being merely a chief of division in the secretary's office. This includes the customs and revenue cutter services and the administration of loans and currency laws.

The most important officials under the immediate direction

of the Secretary of the Treasury are the three assistant secretaries, to each of whom is assigned the general direction of certain divisions in the secretary's office and the supervision over some of the partially independent bureaus. The division of labor between the different assistant secretaries is not permanently fixed by statute, and is changed from time to time according to the personal qualities of those who fill these positions. There is no distinction in rank between the three assistant secretaries, and all receive the same salary, of $4,500 a year. One of them may, however, be authorized to sign warrants for the receipt and disbursement of moneys in place of the secretary, and empowered to act—in the absence of the secretary—as the head of the department; and he might be designated in a special sense as the deputy secretary.

A chief clerk has general charge over the office staff, which is organized into ten divisions, dealing with appointments, bookkeeping and warrants, public moneys, customs, the revenue cutter service, stationery, loans and currency, mails and files, special agents, and miscellaneous matters.

CUSTOMS ADMINISTRATION

From the establishment of the government under the constitution of 1787 the main source of revenue has usually been the customs duties on imported goods. This was the principal source of income, and, except during the War of 1812, almost the only source until 1863, when heavy internal revenue taxes were laid on account of the war expenditures. From 1864 to 1868 the internal revenue was larger than the customs, and since then has constituted a very important part of the government income. After 1868, however, the customs continued to exceed the internal revenue, except in 1894, and from 1898 to 1902.

The revenue received from customs has shown a great increase with the development of the country and of government expenditures. Beginning at about $4,000,000 in 1791, there was a fairly steady increase, with slight additions to the tariff

rates, until 1808, when the customs revenue was $16,363,000. The restrictive measures on trade and the war with Great Britain cut down the amount from 1808 to 1815. After the war, the sudden increase of imports increased the revenue to $36,000,000 in 1816; a new tariff and a depression in trade reduced it to $17,000,000 in 1819. Then followed a long period of frequent changes in the tariff laws and minor fluctuations in customs revenue, ending in 1847 with receipts of $23,000,000. Under the Walker tariff act of 1846, importations increased and customs receipts rose as high as $64,000,000 in 1856 and 1857, falling considerably below this amount after the panic of the latter year.

The Morrill tariff act of 1861 increased duties, and further large increases rapidly followed on account of the Civil War. The revenue from customs rose materially, at once, and when trade revived after the war reached a maximum of $179,000,000 in 1866. Since then has been another period of minor changes in tariffs and fluctuating trade conditions, causing the irregular rise and fall of customs revenue. The minimum of $130,000,000 was reached in 1878, and almost equalled in 1894; the highest figures have been $229,000,000 in 1890 and $284,000,000 in 1903.

While the tariff schedules impose a complicated mass of detailed duties on all sorts of commodities, the bulk of the revenue to the government is derived from the duties on a very small number of these. Under the present law, nearly a fourth of the total customs revenue is derived from the duties on sugar, which amounted in the aggregate in the year ending June 30, 1903, to $63,000,000. In the same year the duties on wool and woolens amounted to $28,000,000; on cotton goods, to $11,000,000; on silks, to $17,000,000; on linens, to $14,000,000; and on tobacco to $22,000,000. Duties on these articles were more than 50 per cent. of the total customs revenue. Before 1890 the duties on iron and steel were one of the most important sources of revenue, often exceeding $20,000,000 a year,

but with the vast development of domestic production the imports in this line have fallen off very markedly.

To collect this vast revenue necessitates a complex machinery of officials, which has been developed by means of a series of customs administration acts, passed from time to time. The first act, passed in 1789, provided a customs service modelled after that organized in New York state under a law of 1784, and the main principles of this organization are still in effect. It divided the country into collection districts, and provided for officers known as collectors, deputy collectors, naval officers, and surveyors, and also for subordinate employees under the titles of weighers, measurers, gaugers, and inspectors. A law of 1799 rearranged the collection districts, and further changes in such districts have been made from time to time by statute. In 1846 the bonded warehouse system was established. In 1851 a board of appraisers was established, which received additional powers and larger importance in 1890. In 1870 the fee system for paying customs officials was abolished; and in the same year a corps of special agents of the Treasury department was established, to enable the department to maintain effective supervision over the local offices. In addition to the congressional statutes regulating the machinery of customs collection, there are many administrative regulations governing the duties of the officials, issued by the President and the Secretary of the Treasury.

In the various collection districts into which the country is divided there are now 128 ports of entry, on the borders of the country, mostly along the seaboard, at one of which any imported goods must be entered. There are also 31 delivery ports (which are usually large inland cities), to which imports may be shipped directly from abroad, if they have been entered or reported at a port of entry. At a port of entry the full complement of officials consists of a collector, naval officer and surveyor; but only a few of the largest ports have separate persons for each office, and at less important places one man performs the duties of two or more offices. At a port of deliv-

ery there is no collector, but the surveyor is in charge of the employees and government storehouses. These officers are appointed for important ports by the President and Senate; for minor places by the Secretary of the Treasury.

The collector is the principal local customs officer at each port. Subject now to civil service examinations, he selects gaugers, measurers, inspectors, appraisers and clerks, and has general direction of the local staff. In the early days of the national government, the local collectors were left a large discretion in the interpretation of statutes, but as the service has developed, uniform rules and regulations have been established by the Secretary of the Treasury, which reduce the local officers to distinctly subordinate positions. The naval officer has to countersign official documents as a check on the collector. The surveyor has immediate charge of the outdoor force,—the gaugers and inspectors, who examine goods at the docks and storehouses.

By far the most important port is New York, where 60 per cent. of the total imports to the United States are received, 64 per cent. of the customs revenue is collected, and 35 per cent. of the customs officials and employees are located. The other principal ports are, in the order named, Philadelphia, Boston, San Francisco, Baltimore, New Orleans, Chicago, and Detroit. There are, altogether, about 4,800 persons employed in the local customs offices. In addition, there are about 200 persons in the revenue cutter service, which employs about eighty vessels in the enforcement of the customs laws. There is also a small corps of special agents, under the immediate control of the Secretary of the Treasury, engaged as detectives and inspectors of the local officials. The board of general appraisers acts as a customs court on appeals from the assessments of local officers.

In spite of the importance of the customs service there is no special bureau in the department of the Treasury dealing with it. There is only a division of customs and a division of the revenue cutter service in the immediate office of the Secretary

of the Treasury, while one of the assistant secretaries has special supervision of customs matters. Before 1894 there was a commissioner of customs, but his duties corresponded to those of the auditors, and the office was abolished in the reorganization of the auditing service.

The process of customs administration may be described in four main stages: (1) the entry of importing vessels and imported merchandise; (2) the appraisal of the customs duties; (3) appeals from the duties assessed; and (4) the collection of the duties.

Entry.—All vessels must enter at a port of entry, and there are severe penalties for attempting to unload without entering at such a port. It is forbidden by law to import dutiable merchandise in vessels of less than thirty tons burden.

Every vessel from a foreign port must have a manifest of her cargo, a document signed by the master, stating the port of departure, the consignees, the port of delivery, and the items of cargo. The revenue marine force, which patrols the coast, boards vessels coming from foreign ports and requires such vessels to produce their manifest to be endorsed by the officer of the revenue marine vessel. A copy of the manifest must be sent to the collector on arrival; and the master of the vessel must also report on oath on all particulars required in the manifest. It is only after this procedure that permission to unload is allowed. Generally unloading has to be performed between sunrise and sunset, but in large ports special licenses for night unloading are granted. The unloading takes place under the supervision of a government officer.

Consignees must enter the merchandise at the customs house, by presenting an invoice to the collector, signed by the person shipping or owning the goods, and for goods subject to *ad valorem* duties the invoice must state the value. The invoice must be verified by the declaration of persons signing it, and the collector may require documents to assist in determining values. The invoices must also be certified by the consul at the port nearest the point of shipment, but this work is perfunc-

tory, as consuls are not competent to judge of values. Where goods are imported by the manufacturer, the attempt is made to get at the cost of production from his statement.

Appraisal.—Duties may be either specific or *ad valorem,* and sometimes both kinds are imposed on the same class of goods. From the administrative point of view specific duties are the better, as they simplify the process of assessing the amount of the duty. But there are still many *ad valorem* duties which necessitate an appraisal of the value of goods.

The government does not rely on the declaration of importers to determine values. In large ports there are appraisers appointed; and in small ports appraisals are made by the collector. Certain packages are marked on each invoice, and these are sent to the appraisers, who are supposed to know the value of goods. But the Secretaries of the Treasury complain that the appraisers are often not competent, and the tendency is to accept the value of the invoice. The report of the appraisers to the collector states the character of the articles (classification) and the value; if this appraisal appears to the collector too low, he can order a reappraisal by one of the general appraisers, which is also called an original appraisal.

There has always been much complaint by the government of undervaluation, and by importers against the decisions of the appraisers. In order to induce importers to announce full value on their goods, it is provided that if the appraised value is 40 per cent. over the entry value, the latter is considered presumptively fraudulent, and either the goods are forfeited or penalties are imposed. These provisions have been upheld by the Supreme Court.[1]

Appeals.—Administrative appeals are, however, provided against unjust original appraisals, and distinct appeals are now provided for overvaluation and for wrong classification. As to valuation, there has always been an appeal from the original appraisal. At first there was an attempt at a sort of jury, by calling in members of the trade with a representative

[1] 148 U. S. 214.

of the importer. But this was not satisfactory either to the government or to the importer, and another body was created, dating from 1851, but fully developed in the Customs Administration Act of 1890. Under this latter act the President appoints nine general appraisers, not more than five of one party. Three of these form a court of general appraisers in New York; the others, in two boards, travel to the different ports in the country. The appeal from the original appraisal goes to this body, which acts in some respects as a court, although it does not follow all the formalities of judicial procedure.[1]

The determination of this board on questions of valuation is final, and the only thing authorizing a further rehearing would be fraud.[2]

Under the original law there was no administrative appeal provided for mistakes of classification, the theory being that as a question of law it should be decided by the courts. The national judiciary worked out a remedy under the rules of private law. If the importer paid the duties under protest, he could then bring suit against the collector for unjust enrichment.[3] The collectors then developed the custom of keeping back moneys due the government so as to pay amounts awarded against them on such suits, and this custom seriously disarranged the government accounts. Accordingly in 1839 Congress provided that the collectors should pay in all receipts to the Treasury; but the Secretary of the Treasury could repay the collector if it was shown to him that there was an improper classifiaction, that is, the Secretary of the Treasury was made an appellate authority on questions of classification. This act did not formally abolish the judicial remedy; but the courts now held, that as the collectors no longer held the money, suits for unjust enrichment were not valid.[4] This situation was not satisfactory to Congress; so in 1845 it was provided that judi-

[1] 146 U. S. 60.
[2] 1 Wallace, 375.
[3] 10 Peters, 137.
[4] 3 Howard, 236.

cial suits should be restored, and the Secretary of the Treasury should pay the amounts awarded; and at the same time the appellate jurisdiction of the Secretary of the Treasury was abolished. In 1864 the appellate jurisdiction was restored, and both remedies existed.

Notwithstanding the administrative remedy the courts became crowded with customs cases (five thousand a year), and there was much complaint of the system. But no change was made until 1890, when the Customs Administration Act provided for an appeal on classification from the decision of a collector to the Board of General Appraisers; but on these questions of classification their decision is not final (as they are on questions of valuation). The case may be then carried to a United States circuit court, by *certiorari,* and the decisions of the circuit court are final, unless the circuit judge considers the question of such importance as to allow an appeal to the Circuit Court of Appeals, or in very important cases to the Supreme Court. This system seems likely to continue, and is developing a special class of attorneys who appear in such cases.

Collection of Duties.—Before 1846 duties were either paid or secured to be paid before the goods were landed; but in that year the bonded warehouse system was begun. By this plan an importer may store his goods in a government warehouse, by giving a bond for double the amount due to pay the duties when the goods are withdrawn from the warehouse. When private warehouses are used as bonded warehouses they must be approved by the Secretary of the Treasury, and are under the joint custody of United States officers and the owner.[1] Goods warehoused are at the risk of the owner.

Warehoused goods may be withdrawn at any time within a year on payment of duties; and on payment of ten per cent. extra the time may be extended to three years. If warehoused goods are reëxported duties are not required; if goods on which duties have been paid are exported the duties are paid back

[1] 3 Blatchford, 413.

(drawback) except one per cent. Similarly, on goods subject to internal revenue duties, a drawback is paid by the government when they are exported.

Goods warehoused may be sent under bond to other ports in this country or other collection districts in sealed railroad cars.

In all cases of bonded or warehoused goods the preliminary liquidation of duties for fixing the amount of the bond is not final; but the final liquidation is made when the goods are withdrawn; and appeals may be taken from these final liquidations.[1]

Ordinarily goods do not get out of the government's hands until the duties are paid; but if they do by fraud or otherwise, the government has the right to sue for the duties, and the act of importing makes the importer liable to the duty.[2]

INTERNAL REVENUE SERVICE

Before 1862 internal revenue duties were never a very important part of the revenue of the United States government, and indeed only during two short periods were there any internal revenue taxes and an internal revenue administration. The first tax for the national government in addition to the customs duties was an excise tax of 25 cents per gallon on whiskey, established in 1791. In spite of the "Whiskey Rebellion" in Pennsylvania, the tax was retained, and was extended to other objects, including carriages, snuff, refined sugars, stamps on bills of lading, and bills of exchange. The revenue reached $1,000,000 in 1801. These duties were abolished during Jefferson's first term, although small amounts of back taxes continued to be received. In the War of 1812 recourse was again had to internal revenue taxes, and from 1814 to 1818 the receipts were from $1,662,984 to $5,124,708 a year. In the latter year the taxes were again repealed; but, as before, small amounts continued to be received, even as late as 1848. From then until the Civil War there are no internal revenue receipts.

[1] 18 Wallace, 322.

[2] 2 Cranch, C. C. 508; 13 Peters, 486.

Under the pressure of the government need for revenue a new and elaborate system of internal taxes was put in force by the act of July 1, 1862. The income for the first year was $37,000,000; and this steadily increased (under improved administration and additional taxes) to $309,000,000 in 1866, far exceeding the customs revenue. After the war large reductions were made in the taxes, and many were entirely abolished. The revenue fell to a minimum of $102,000,000 in 1874. From then until 1897, it fluctuated between $110,000,000 and $161,000,000 a year, ranking next to the customs in importance. New taxes imposed in 1898 caused the receipts from internal revenue to swell once more, reaching a maximum of $307,000,000 in 1901, and declining somewhat since that date with the repeal of the war taxes. From 1898 to 1902 the revenue from internal taxes exceeded that from customs duties.

Half of the internal revenue now comes from the taxes on distilled spirits, about one-fifth from taxes on fermented liquors, about a fifth from taxes on tobacco, and the remainder from the tax on oleomargarine and some minor items.[1] During the Civil War, an income tax was an important internal tax, producing nearly $73,000,000 in 1866. While this tax was held to be constitutional by the Supreme Court, another income tax provided for in 1894 has been held to be unconstitutional.[2] The bulk of the internal taxes are collected in a few states. Illinois pays the largest amount—$50,000,000, one-fifth of the total in 1903; New York, Indiana, Kentucky, Pennsylvania and Ohio each contribute from $18,000,000 to $30,000,000, Mis-

[1] Internal Revenue 1902-3

Distilled spirits	$131,953,472
Fermented liquors	47,547,856
Tobacco	43,514,810
Oleomargarine	736,783
Miscellaneous	7,057,203
	$230,810,024

[2] 157 U. S. 429; 158 U. S. 601.

souri $9,000,000, and Wisconsin $7,000,000. Three-fourths of the total internal revenue is collected in these eight states.

The present administrative organization of the internal revenue service dates from the system established in 1862. At its head is the Commissioner of Internal Revenue, appointed by the President and Senate at a salary of $6,500 a year. Nominally a subordinate of the Secretary of the Treasury, this officer is almost independent and occupies a much more important position than the division chief of customs. He has general superintendence of the collection of all internal revenue taxes and the enforcement of the internal revenue laws; he regulates the employment of special revenue agents and the compensation and duties of gaugers, storekeepers and other subordinate employees; he controls the preparation and distribution of internal revenue stamps, instructions, regulations, forms, blanks and stationery; and he hears and decides appeals from the acts of internal revenue collectors. The business of his office is distributed among eleven divisions, each with its chief and staff of clerks.

Congress does not establish internal revenue districts by statute, as it does customs districts; but allows the President to establish and abolish districts and provide officers for each. While the Civil War taxes were in force, internal revenue districts were usually co-extensive with the districts for the election of members of the House of Representatives; and there was a staff of 700 collectors and 3,100 assessors. The number of districts has been reduced from time to time by consolidating two or more into one, until since 1887 there have been but 63. The collectors of internal revenue are appointed by the President and Senate; other officers and employees—gaugers, storekeepers and inspectors—are appointed by the Secretary of the Treasury. As all of these persons have access to the distilleries, breweries and factories and can learn secret processes of manufacture, and may also be tempted to defraud the government, they are subject to very strict discipline, and may be fined, imprisoned and disqualified from holding office for violating

the laws and regulations governing their duties. The corps of internal revenue agents under the immediate control of the Commissioner of Internal Revenue act principally as a force of detectives to discover and prevent fraud on the government either by the officials or by private individuals.

It is the general purpose of the tax laws to make the manufacturers assess themselves and pay the tax; they are therefore required to conduct their business in certain ways which will make this automatic system of assessment and collection possible.

Distilled Spirits.—The statute defines who is a distiller in great detail. Before a distiller can enter on his business he must comply with the following requirements: (1) He must file a declaration of intention with the collector, which must show where the still is set, its capacity, its owner, and the residence of the owner,—notice of any change must be given within twenty-four hours. (2) He must file a bond with two sureties in double the amount of the tax on the production of the still for fifteen days. In this bond the individual binds himself to pay the duties, and obey all other requirements of the law, and not to mortgage the distillery. (3) He must satisfy the collector before approval of the bond that he is the owner of the distillery in fee simple and that the property is unencumbered. (4) He must make an accurate plan of the distillery and machines. The details of this requirement are most minute, and its accuracy must be verified by the collector; and no alteration may be made without the consent of the collector, and altered plans must then be made. These plans must be in triplicate—one is filed in the distillery, one with the collector, and one with the Commissioner of Internal Revenue. (5) The distillery must be surveyed by the collector and an assistant appointed by the Commissioner of Internal Revenue, so as to estimate the capacity for twenty-four hours; and of this survey triplicate copies must be made. Any distiller who does not comply with all these requirements is an illicit distiller.

Every distiller is supposed to have commenced business at 12

o'clock noon on the third day after his bond has been approved, and to be in continuous operation until notice is given to the contrary.

A record must be kept of all materials used in the business, their cost, and means of delivery; also a list of the employees. An account must also be kept of the process of distilling, showing the time of day when yeast is inserted, the amount of grain used, the amount of spirits produced, and the amount stored. These books must be preserved for two years and are subject to inspection. A duplicate sworn return must be made from these books monthly and sent to the collector.

A storekeeper is asisgned by the government to each distillery, to record the operations in the distillery,—measuring the grain as it goes into the mash. In the cistern room the government gauger is present as the liquor is run into barrels, and these barrels are numbered and stamped with serial numbers, the contents, the name of the gauger and the date. These marked barrels are placed in the distillery warehouse, where they may remain without bond one month; and in bond for a period determined by the Commissioner of Internal Revenue. When any liquor is to be sold, the distiller receives from the collector tax-payer's stamps, which are also numbered. The absence of any of these numbers, marks and stamps will be noticed by internal revenue agents in their inspections. The distiller must keep a record of his sales. He must also have a sign of a certain size with words "Registered Distiller."

If the tax is not paid in full up to the capacity of the distillery, deficiency assessments are made. If the tax is paid on less than 80 per cent. of the capacity, a deficiency assessment is made even if the total production has been reported. If the amount produced does not correspond with the amount of grain used, or if the amount actually produced is not represented in the tax, deficiency assessments are levied.[1]

These rules also apply to rectifiers.

Fermented Liquors.—Similar rules apply to brewers, but

[1] 16 Wallace, 240; 17 Wallace, 182; 21 Wallace, 655.

there is no storekeeper, and there is thus more reliance placed on the brewer's books and reports. Stamps are put on the bung-hole, so that they will be broken when the barrels are opened.

Tobacco.—The general principles are the same as for the tax on liquors; but, as with brewers, the records are accepted more than for distillers. The manufacturer must make a declaration, use books, make returns, and use packages of certain sizes so stamped that the stamps will be destroyed when used. Also all dealers in leaf tobacco are required to keep records of sales and report to the collector. Here, too, the commissioner is authorized to make deficiency assessments, if the tax paid does not come up to the reports and records.

Similar provisions apply in the assessment of the oleomargarine tax.

Collection.—Ordinarily the tax will not only assess but collect itself. The manufacturer must purchase stamps, which for beer and cigars are destroyed when the packages are opened. To provide for obedience to the law there is a series of penalties and forfeitures not only of goods, but also of articles of manufacture. Actions for penalties and forfeitures are brought in circuit courts. The Supreme Court, however, holds that these penalties do not make the law criminal so as to be construed strictly; but that it is to be construed liberally, so as most effectually to enforce the revenue laws.[1] The penal provisions are, however, construed strictly; but a proceeding to forfeit is not a criminal proceeding.[2] Forfeitures will not be avoided by the payment of the tax, or even by a *bona fide* sale.[3]

These penalties are so severe that the Secretary of the Treasury is given power to remit them where he considers their application too hard.

The United States has also a supplemental right to bring

[1] 97 U. S. 237; 10 Wallace, 395; 3 Howard, 197, 210.
[2] 18 Wallace, 516.
[3] 14 Wallace, 44; 103 U. S. 679.

suit to collect the tax.[1] The United States also has a lien on the property of the tax-payer, and the lien dates not from time of demand, but from the time when the tax became due.[2]

Appeals.—Unlike the general property tax or *ad valorem* customs duties, the value of the thing taxed does not come into question; the rate is fixed in amount, and there is not the room for arbitrary action by the government officer, and so less need for a system of appeals. But in the deficiency assessments there is a valuation, and in practice there has sprung up an administrative remedy. A tax-payer considering himself aggrieved may petition the Commissioner of Internal Revenue for a rehearing; and while in theory this is asking an officer to review his own action, in practice it is an appeal from the collector to the commissioner. If the commissioner does not grant the petition, the only thing is for the tax-payer, when the government proceeds to collect by distress and sale, to pay under protest and bring suit against the collector. There is no further appeal to an administrative officer; and courts can be appealed to only after the tax has been paid in accordance with the decision of the commissioner. In such a case the court can go into the whole question, and its decision is not prejudiced by any act of the administration.[3]

Another case is where there is doubt as to the legal liability of a person to pay the tax or suffer a penalty. As to this question of law the individual has also the right of administrative appeal to the Commissioner of Internal Revenue for a refund of the tax paid;[4] and if the commissioner decides in his favor his claim will be accepted in the Court of Claims;[5] but if, and only if, the commissioner decides against the appellant there is a judicial remedy.[6] The tax-payer may bring action (within two years after paying tax under protest) against the collector.

[1] 19 Wallace, 227; 21 Wallace, 65.
[2] 4 Dillon, 71; 14 *Fed. Rep.*, 263.
[3] 21 Wallace, 65; 14 *Fed. Rep.*, 263.
[4] *Revised Statutes*, §3220.
[5] 96 U. S. 567.
[6] 14 Wallace, 613.

If the court decides in favor of the tax-payer, the government repays the collector, who is technically adjudged to have taken advantage of his position to enrich himself.[1] In these actions the court may go over the whole case *de novo,* without regard to the action of the commissioner, collector, or other administrative authority.[2]

On general principles there could be an action for trespass against a collector, but if he acted under proper orders no remedy is granted.[3]

The statute specifically provides that there is no remedy by injunction to restrain the collection of the tax.

Next to the customs and internal revenue the largest source of government income is the postal service, where the expenditures exceed the revenues. This branch of administration will be considered in the chapter on the Post-Office department. The income from the sale of public lands, now a comparatively small item, will be noted in connection with the land office in the chapter on the department of the Interior. Other sources of revenue are of very minor significance, involving no important administrative arrangements.

[1] 4 Dillon, 66.
[2] 7 Wallace, 122.
[3] 14 *Fed Rep.*, 263.

CHAPTER VIII

The Department of the Treasury—II

The Independent Treasury

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THE TREASURY

By the act of 1789 establishing the department, the Treasury was given a legal but not a substantial existence; and for the first few years state banks were used as the custodian of government funds and financial agents of the government. Under the act of 1791 establishing the first Bank of the United States, that institution became the official agent of the Treasury, and

so continued until its charter expired in 1811, after which the government moneys were again deposited in various state banks. During the War of 1812 the banks south of New England suspended specie payment, and the government lost about $1,000,000 out of $9,000,000 on deposit in these banks. This financial loss led to the establishment in 1816 of the second Bank of the United States, which, like the first, acted as the fiscal agent of the government, receiving the revenues and holding and distributing the funds. Before the end of the twenty-year period for which this bank was chartered there arose the political conflict with President Jackson, and the "removal" of the government deposits in 1833. Strictly speaking, there was not a physical withdrawal of the funds at one time; but no further deposits were made, and the balances to the credit of the government were depleted in the ordinary course of business.

There was at this time no law regulating the control of public moneys; but on the authority of the President and Secretary of the Treasury deposits were again made in various state banks; and in 1836 a statute was passed authorizing this system. The period of bank and land speculation which followed and the crisis of 1837 belong to a history of banking; but we may note that the banks which failed at that time carried $32,000,000 of government deposits, and the payments made in depreciated notes involved a net loss to the government of $2,500,000. From this time part of the government funds were kept in the hands of officials (the officers of the mints and revenue collectors); but the attempts to establish a government Treasury system were stubbornly opposed in Congress. An act establishing this system was passed in June, 1840, but repealed by the whig Congress in August, 1841. The bill for a third national bank was, however, vetoed by President Tyler; and the unlegalized system of government officials acting as depositaries continued. Many of the officials deposited the funds in selected banks. Finally, in 1846, the sub-treasury act was passed. Under the *régime* then existing of state banks, so

slightly regulated and supervised, the establishment of the sub-treasury was clearly necessary for the protection of the government funds.

The act of 1846 provided for a physical treasury at Washington, under the immediate direction of the treasurer of the United States, and six branch or sub-treasuries at Philadelphia, New Orleans, New York, Boston, Charleston and St. Louis, under the direction of assistant treasurers or treasurers of the mints. Government officials were no longer to deposit funds in banks; but were to retain them or transfer to one of the treasuries; while as a necessary corollary of the dissociation of the government from the banks, all revenues were to be paid in specie or government treasury notes.

In spite of the failure of Congress to provide for adequate storage vaults, and difficulties in transferring funds from one depository to another, the new system worked fairly well. Aided by a bound in exports, specie payments and the government credit were maintained through the Mexican War, and again during the crisis of 1857. But in 1862, following the suspension of specie payments by the banks, the government also suspended specie payments, and legal tender notes (greenbacks) were issued for government payments. In 1863, in connection with the establishment of the new national banking system, it was provided that the national banks might become depositories of public moneys (except customs dues, which were still paid in specie) and might be employed as financial agents of the government in the collection of revenue and the placing of the enormous loans required to carry on the war. During 1866 the banks collected for the government over a billion and a half of dollars; but after the war the amount passing through the banks was only a small portion of this sum. For the past forty years the national banks have continued to be government depositories; but the main agencies for the collection and disbursement of the government funds have been the independent treasuries.

As now organized, the Treasury system consists of the Treas-

ury offices at Washington, under the Treasurer of the United States, nine sub-treasuries under the charge of assistant treasurers, and a varying number of designated depositories. The general supervision of the system comes under the division of public moneys, in the immediate office of the Secretary of the Treasury.

The Treasurer of the United States is appointed by the President with the advice and consent of the Senate; and a new treasurer is appointed with a change in the political control of the Presidency. He is charged with the receipt of all moneys due to the government, with the safe-keeping of the government funds, and with the payment of properly authorized expenditures. In paying the interest on the public debt and the salaries of members of Congress, the Treasurer acts directly under the authority of the permanent appropriations, and is afterwards indemnified by warrants drawn by the Secretary of the Treasury. But for other payments there must first be presented a warrant issued by the Secretary of the Treasury, countersigned by the Comptroller of the Treasury and registered by the Register of the Treasury. Warrants for the expenses of the Post-Office department are issued by the Postmaster-General, and countersigned by the auditor for the Post-Office department.

The treasurer is also the agent of the government for the issue and redemption of the government paper currency, and for the redemption of national bank notes. He further acts as custodian of Indian and other trust funds, and as one of the sinking fund commissioners for the District of Columbia.

For the discharge of these various duties there are a number of divisions in the treasurer's office, each with a chief and appropriate staff of clerks.

The sub-treasuries, now nine in number, are located at New York, Boston, Philadelphia, Baltimore, Cincinnati, Chicago, St. Louis, New Orleans and San Francisco. That at New York (in Wall street, on the site of Federal Hall, where Washington was inaugurated and the first Congress met) is by far the most

important; the financial transactions there are several times the aggregate of all the others, and the moneys actually handled are much larger than at all other treasuries, including the central office at Washington. The work of the sub-treasuries consists in receiving and paying public moneys, receiving deposits of disbursing officers and issuing and redeeming government coin and paper currency.

The independent treasury system has been a success in preventing the loss of government funds, such as occurred under early systems of depositing in banks; also as a means of retaining government specie when banks are on a paper basis. But it has been severely criticised for its influence on business by its irregular absorption and disbursement of currency.

A brief summary of the development of the aggregate financial transactions of the Treasury will serve to illustrate the growth of this branch of the government service. Starting in 1791 with receipts of less than $5,000,000 and expenditures under $4,000,000, the annual budget increased slowly to a maximum of $17,000,000 in 1808. The embargo on foreign trade reduced revenues in 1809 to less than $8,000,000; and for the next two years the disturbed state of trade was reflected in the government finances. The War of 1812 brought a large increase in expenditures, met by loans, and by a marked increase of customs receipts on the conclusion of peace. In 1816, expenditures were $48,000,000 and gross receipts $57,000,000. A lower scale of financial transactions was soon restored; and from 1820 to the Mexican War the annual account was usually between $20,000,000 and $30,000,000, except in 1835 and 1836, when the speculative purchase of public lands swelled the receipts, and from 1837 to 1839, when the expenditures of the War department were noticeably increased on account of Indian relations. The Mexican War brought the annual budget up to $60,000,000 for three years; and was followed by a permanent increase in government finances, which exceeded $80,000,000 a year before the outbreak of the Civil War. The struggle with the seceding states caused a stupendous increase,

to nearly $600,000,000 in the first year and $2,000,000,000 in the last year of the war. By 1869 the annual outlay for all purposes was again below $600,000,000; and since then has seldom gone below $500,000,000 and at times has approached $1,000,000,000 a year. As the payments on account of the war debt have decreased, the ordinary expenditures have increased; the war with Spain and the insurrection in the Philippine Islands caused additional outlay for several years; and since then the increase in the army and navy has added to the annual appropriations.

While the collection of revenue from taxation and the detailed control over expenditures is managed by other branches of the department of the Treasury, the administration of loans and the national debt comes under the immediate direction of the Treasury proper. The national debt began during the war for independence; and the government of the United States established in 1789 accepted the obligations made by the Continental Congress and the Confederation, and also assumed the state debts incurred during the Revolution, the whole aggregating about $80,000,000. This amount was somewhat increased under the federalists, and by the purchase of Louisiana, so that in 1804 the outstanding debt was $86,000,000. A steady decrease then followed, until by 1812 it had been reduced to $45,000,000. The war increased it to $127,000,000; but this was steadily decreased until by 1835 it had been practically extinguished. The panic of 1837 necessitated renewed borrowing; and the debt increased as a result of the Mexican War and again after 1857, until by 1860 it was $65,000,000.

With the enormous expenditures of the Civil War, the interest-bearing debt was increased to $2,381,000,000 in 1865, besides $400,000,000 in legal tender notes and other non-interest-bearing obligations. The payment of this debt was at once begun; and by 1892 the interest-bearing debt had been reduced to $585,000,000. Deficient revenues and the war with Spain led to new loans and an increase of debt to $1,046,000,000 in 1899, which has been reduced to $895,000,000 in 1904.

In addition to the interest-bearing debt, the United States has largely increased its debt in the form of paper currency, which will be noted further in another section of this chapter.

ACCOUNTING AND AUDITING

The act of 1789 organizing the department of the Treasury provided for a register of the Treasury, a comptroller of the Treasury, and an auditor, who performed duties similar to those performed by officers with the same titles under the Confederation, in examining and approving accounts and claims against the government. In 1792 another auditor was authorized, under the title of accountant of the department of War. The development of government finances necessitated an extension of the auditing service; and an act of 1817 reorganized it entirely, providing for a first and second comptroller of the Treasury, with five auditors, in charge of different branches of the service. In 1836 a sixth auditor was authorized; and in 1849 the office of commissioner of customs was established to relieve the first comptroller of appeals from the auditors in reference to customs administration. Further extensions of the service were accomplished by enlarging the subordinate force under each of these officials; and the general system continued unchanged to 1894. In that year there was another reorganization: the positions of second comptroller and commissioner of customs were abolished, and the duties of the auditors rearranged.

As now organized the auditing service consists of the register of the Treasury, the comptroller of the Treasury, and six auditors with a staff of book-keepers and clerks.

The Register of the Treasury is appointed by the President and Senate, at a salary of $4,000 a year. He signs and registers all United States bonds, registers bond transfers and the redemption of bonds, prepares schedule of interest payments, signs transfers of government funds from the treasury to subtreasuries or depositories, and receives and records all

redeemed or condemned bonds, paper currency and revenue stamps.

The Comptroller of the Treasury is the appellate authority from the decisions and settlements made by the auditors. He is appointed by the President and Senate, and receives a salary of $5,500 a year.

Appeals from the settlements of the auditor may be made within one year by the claimant, the head of the department interested or by the comptroller himself; and the comptroller's decision is final and conclusive upon the executive branch of the government. Upon the request of a disbursing officer or the head of a department, the comptroller is required to give his decision upon the validity of a payment to be made, which decision shall govern the auditors and the comptroller. He is also required to approve, disapprove or modify all decisions of the auditors making an original construction or modifying an existing construction of statutes. By the regulations of the department, the comptroller passes upon the sufficiency of authorities to endorse drafts and receive and receipt for moneys from the government. The forms of keeping and rendering all public accounts (except those relating to the postal service), the recovery of debts due to the United States, and the preservation of accounts finally settled are under the direction of the comptroller.

The Auditors are appointed by the President and Senate, and receive salaries of $4,000 a year. Their duties are in general to examine and settle all accounts and claims for the various departments, in accordance with the statutes and appropriations of Congress, and the decisions of the comptroller of the treasury. Each auditor has charge of the claims and accounts of one or more executive departments, and the specific scope of the duties of each is indicated in their full title as follows:

Auditor for the Treasury department.

Auditor for the War department.

Auditor for the Interior department.

Auditor for the Navy department.

Auditor for the Post-Office department.

Auditor for the State and other departments.

The auditor for the Post-Office department has larger powers than the other auditors. He is in a sense auditor, comptroller and register. He certifies balances due direct to the Postmaster-General instead of to the Treasury department, as do the other auditors. He countersigns and registers the warrants upon the Treasury for postal expenses, superintends the collection of debts for the service of the Post-Office departments, directs suits and takes all legal measures to enforce payments due the United States for the service of the Post-Office department, and for this purpose has direct official relations with the solicitor of the treasury in the department of Justice. He is the legal custodian of all contracts of the Post-Office department.

This auditing service thus constitutes an effective administrative control over the disbursing officers of all the other departments. It occupies, however, a materially different position from the corresponding service in other countries, where it has a distinctly judicial aspect. The French *Cour des Comptes* and the Prussian *Oberkammergericht* are organized as independent courts, and are not considered simply as subordinate branches of the finance administration. In Great Britain, the comptroller-general has a judicial tenure, which makes him independent of the Exchequer. In this country, however, the comptroller and auditors are recognized as part of the department of the Treasury, while they hold their positions subject to the President's power of removal, and in practice the principal officers do change with party changes in the Presidency. They have nothing of the judicial organization or judicial tenure which characterizes the system in other countries.

In regard to their independence of the Treasury department, however, they do assimilate to the general rule. While the auditing officers are grouped under the department of the Treasury, the Secretary of the Treasury has no authority over

their decisions. This has been the situation from the first. In the other departments established in 1789, the secretaries were authorized to give orders and commands to their subordinates. But the comptroller was designed as a check upon the secretary; he was referred to in the debate of 1789 as an "independent officer," and the statute definitely pointed out his duties. Attorney-General Wirt in 1823 stated officially that the comptroller's decisions could not be disturbed by the President himself:

> "My opinion is that the settlement made of the accounts of individuals by the accounting officers appointed by law is final and conclusive so far as the executive department of the government is concerned."[1]

There was a period of considerable discussion on this point,[2] but in 1868 Congress sustained Wirt's position, although at the same time giving the secretaries the right to demand a reconsideration by the comptroller in certain cases, and to transmit a controverted question to the courts.[3]

From 1797 till the establishment of the Court of Claims in 1855 the only way in which any one having a claim against the government could obtain a judicial consideration of its merits was by having himself sued by the United States. He could then, under certain restrictions, plead his claim so as to reduce or cancel that of the government against him, but was not allowed judgment for any balance in his favor. One result of this system was that public officers retained disputed fees, so as to force suits by the government; but in many cases no attempt was made to press the suits, while the amounts remained charged against the officer on the books of the government. Other claims were settled by private legislation, thus developing a powerful lobby to press such bills before Congress.

Under the present system, a claimant can appeal from the decision of the comptroller of the treasury to the Court of

[1] 1 Atty.-Gen. Op. 624.
[2] 5 Atty.-Gen. Op. 630, 647; 7 Op. 464, 468, 297, 298.
[3] *Revised Statutes*, § 191, 1063.

Claims; and persons remote from Washington can resort to the United States district and circuit courts.[1] This system has in turn affected the action of the comptrollers. Knowing that such proceedings may be instituted, they are not so apt to make arbitrary and partial decisions. They shape their course by judicial decisions, and under permission of the law, apply directly to the court in cases involving controverted questions of law or of fact.

CURRENCY ADMINISTRATION

Closely related as it sometimes is to the fiscal operations of the government, it is important to distinguish clearly from them, the public administration affecting the currency of the country. The latter is only indirectly and incidentally related to the government revenues and expenditures; and in order to emphasize the distinction, we shall consider here not only the bureaus dealing exclusively with coinage and currency matters, but also the currency functions of officials already noted in their relations to the government finances.

Coinage.—Acting under the authority conferred in the constitution, Congress has established government mints for the coinage of money, and has regulated the standards of weight and purity of different metallic coins. Mints are located at Philadelphia, New Orleans, Denver and San Francisco, that at Philadelphia being the most important; while assay offices have also been established at other places, mainly in the mining regions. Each mint is under the charge of a superintendent, while the general supervision of the whole service is in the hands of the director of the mint. This officer is appointed by the President and Senate, at a salary of $4,500 a year. He prescribes rules, subject to the approval of the Secretary of the Treasury, for the transaction of business at the mints and assay offices. He regulates the allotment of coinage, the distribution of silver coin, and the charges to be collected. All

[1] Act of March 3, 1887.
See *History of Court of Claims* in preface to 17 Ct. Claims Report.

appointments, removals and transfers in the mints and assay offices are subject to his approval. He makes annual reports to the Secretary of the Treasury, one on the operations of the mints, and another on the production of the precious metals.

Under the first coinage act of 1792, gold and silver were to be coined on private account at the ratio of 15 to 1. In 1834 the ratio was changed to 16 to 1. But as neither metal was produced largely in the United States, there was but little coinage, until after the discovery of gold in California in 1848, when there was a large increase in the gold coinage. In 1853 the government began the minting of minor coins on its own account. In 1873 the coinage of the standard silver dollar, which had never been coined in large quantities, was suspended. Just at this time new silver mines were opened up in the west, which led to a demand for silver coinage. In 1878 an act was passed requiring the government to purchase silver bullion to the extent of $2,000,000 a month, to be coined into silver dollars. At the same time the annual coinage of gold increased. In 1890 the purchase of silver bullion was increased to 4,500,000 ounces a month, and this was continued until the repeal of the act in 1893. But compulsory coinage was no longer required, and the amount coined was largely reduced for a few years. Since 1895 the accumulated silver bullion in the treasury has been coined in large amounts, while from 1897 to 1901 there was another marked increase in the coinage of gold.[1]

Government Paper Currency.—In the early part of the eighteenth century paper currency was issued in the colonies; but was prohibited by the British Parliament in 1751. During

[1] COINAGE AT THE UNITED STATES MINTS (in round numbers)

	Gold.	Silver.
1792-1849	$ 150,000,000	$ 92,000,000
1850-1874	800,000,000	80,000,000
1875-1900	1,316,000,000	660,000,000
1901-1903	192,000,000	80,000,000
	$2,258,000,000	$876,000,000

the Revolution resort was again had to paper promises to pay by the Continental Congress, and after the war several of the states issued paper money; but the depreciation and currency troubles which followed were so great that the constitution of 1789 expressly prohibited the states from emitting bills of credit, while as the national Congress was not given power to issue paper currency, it was supposed that such currency was altogether prohibited.

On several occasions during the first half of the nineteenth century, when the treasury was depleted, treasury notes were issued; but these were clearly recognized as a temporary loan and no attempt was made to make them a legal tender. In 1862 the financial strain of the Civil War led to the issue of legal tender notes (greenbacks), up to about $450,000,000; and when the constitutionality of this was contested, it was finally decided to be within the implied powers of Congress.[1] The notes depreciated to as low as 40 per cent. of their face value in specie; and it was not until 1879 that the government was able to resume specie payments, and the notes were accepted at their face value in coin. Instead, however, of retiring the $350,000,000 in notes then outstanding, these have remained as a permanent part of the circulating medium.

Other forms of government paper notes appeared as a result of the purchases of silver under the acts of 1878 and 1890. It was found impossible to keep in circulation the coins minted under the first act, and certificates representing the coined dollars were issued in their place. The act of 1890 simply provided for the issue of treasury notes on the basis of the silver bullion purchased. Under these acts there were in circulation in 1893 nearly $480,000,000 of paper notes, nominally secured by the silver in the treasury vaults, but in fact resting, like the legal tender notes, on the credit of the government. This situation, aided by a decline in government revenues which threatened to deplete the reserve of $100,000,000 in gold main-

[1] Legal Tender Cases, 12 Wallace, 457, and 110 U. S. 421, overruling Hepburn *v.* Griswold, 8 Wallace, 602.

tained against the greenbacks, precipitated the financial crisis of 1893, and led to the repeal of the silver purchase act of 1890.

Since then the treasury notes of 1890 have been in large measure retired; while the volume of silver certificates has been increased as the silver bullion has been coined. In 1904 there were $472,000,000 in silver certificates outstanding, and $11,500,000 in treasury notes. There are also in circulation a varying amount of gold certificates (in 1904, $490,000,000), representing gold coin or bullion in the treasury; and also the legal tender notes of 1862.

Thus from the issue of temporary notes caused by deficiencies in its revenues, the national government has adopted a definite policy of providing a large share of the circulating medium in the form of paper notes, without reference to the fiscal condition of the government. Nevertheless, this distinct work has continued to be performed by officials primarily charged with fiscal interests: the Secretary of the Treasury, the treasurer and the register of the treasury. Moreover, until 1900 even the accounts of the treasury did not distinguish clearly between the fiscal and currency balances. By an act of that year, however, a separate account dealing with the issue and redemption of currency was established, and the treasury statements now distinguish this account from the general fund of the treasury. At the same time the permanent gold reserve against uncovered notes was increased to $150,000,000; and specific authority was given to issue short term bonds if necessary to keep at least $100,000,000 in this fund.

Supervision of National Banks.—Mention has already been made of the first and second banks of the United States, which were chartered by Congress and operated under government supervision. After the expiration of the charter of the second bank in 1836 there was no national supervision of banking until the new system of national banks was established in 1862. In 1865 Congress laid a tax of 10 per cent. per annum on the notes of state banks; thus hampering the latter and encouraging the formation of national banks, which for a time did most

of the banking business of the country. In recent years note issue has become a less important feature of banking; and since 1890 there has been a marked revival of state banks and trust companies. But national banks are still of somewhat greater importance. In 1904 there were 5,457 national banks, with a capital of $777,000,000, circulating notes up to $456,000,000, and deposits amounting to over $5,000,000,000.

Government supervision over the national banks is exercised in chartering them, by printing and issuing their circulating notes, by examining their condition, by assuming charge of insolvent institutions, and by taxing them. Most of these functions are undertaken by a special bureau under the comptroller of the currency; a small part, as the custody of bonds and the collection of the tax, is performed by the treasurer of the United States.

The comptroller of the currency is appointed by the President and Senate for a term of five years. He receives a salary of $5,000 a year, and is required to furnish a bond in the penalty of $100,000. He is prohibited from being directly or indirectly interested in any association issuing national currency.

No national bank can begin business until the articles of association have been submitted to the comptroller and approved by him. It is his duty to see that the capital stock has been subscribed[1] and paid in, and that United States bonds have been deposited in the treasury as security for bank notes; but there is no inquiry as to the commercial need for a bank in the place where it is to be located. No increase or reduction in the capital stock may be made without the authorization of the comptroller of the currency.

National banks may issue notes secured by United States bonds deposited in the treasury. The comptroller of the currency is required to have notes prepared for this purpose, and to issue them to the banks when properly secured. He has also

[1] A minimum of $25,000 capital is required in towns of not over 3,000; and $50,000 in larger places.

charge of the redemption of worn, mutilated or defaced bank notes, and the issue of new notes in their stead. If any bank fails to pay its notes, the comptroller is authorized to sell the bonds deposited as security and provide for the payment.

Supervision is also maintained over the other operations of the national banks by a system of reports and examinations. Each bank must make to the comptroller not less than five reports a year, at dates named and on forms prescribed by him, showing in detail its resources and liabilities. Reports must also be made of all dividends voted, and of the earnings. About eighty national bank examiners are now employed in personal examinations of the banks. These are appointed by the comptroller, and are usually assigned to definite districts. They have power, under the comptroller, to visit without notice any national bank, inspect their books of account, securities and other assets and liabilities, examine the bank officers and directors under oath, and inquire into all matters necessary to a full understanding of their condition. The expenses of these examinations are met by fees paid by the banks.

At the beginning of each session of Congress, the comptroller makes an annual report on the condition of the banks, a record of the work of the bureau, and suggestions as to the amendment of the banking and currency laws. These discussions and recommendations of the comptrollers have usually aroused public interest almost as much as the reports of the Secretary of the Treasury.

This system of government supervision over national banks has been successful in establishing a thoroughly safe system of guaranteed bank notes; and while there have been a considerable number of bank failures, these have never been disastrous. But the volume of note issues is so closely limited that it fails to meet the demands of commerce; and there is a strong pressure for allowing note issues on the general assets of the banks, restricting the amount of such issues by taxing the circulation in excess of certain limits.

MISCELLANEOUS BUREAUS

There still remain in the department of the Treasury a number of bureaus which have no special relation either with the government finances or with the currency or with each other. The marine hospital and life saving services might well be placed in the department of commerce and labor; and the bureau of engraving should have some official connection with the Government Printing Office. But as now organized, they must be considered in connection with the department of the Treasury.

The Public Health and Marine Hospital Service[1] is under the direction of the surgeon-general, appointed by the President and Senate at a salary of $5,000 a year. This officer is always a member of the medical profession, and the position is permanent and not subject to political changes.

In its origin this service was established to provide medical assistance for sick and disabled seamen in the merchant marine, but to this have been added functions in the prevention and suppression of contagious diseases. The marine hospital service was established in 1798, and reorganized in 1870. There are now forty stations at the principal shipping ports, where hospitals are maintained for the medical treatment and care of sailors, supported principally by a small tax on sailors' wages. The officers of the marine hospital service make physical examinations of candidates for the revenue cutter and life saving services, of applicants for pilots' licenses and—on request of the master or agent—of seamen in the merchant marine.

In 1878 there was established a national board of health, which had only a brief existence; but in recent years powers which might be assigned to such a body have been conferred on the surgeon-general, who is now to a considerable degree a public health officer for the whole country. By the inter-state quarantine law of 1890, he was authorized to adopt measures to prevent the spread of certain contagious diseases from one state to another, and to supervise the medical examination of

[1] Science, Vol. 18, 289.

alien immigrants. In 1893 he was given control over the national quarantine service. And in 1902 he was authorized to call annual conferences of state health and quarantine officials; and at the same time the name of the service was changed to the public health and marine hospital service, in order to indicate its enlarged functions. The bureau contains laboratories for the investigation of contagious diseases; and publishes weekly health reports from state and foreign health authorities.

The Life Saving Service, under the charge of a general superintendent at $4,000 a year, is established for the saving of life and secondarily of property from stranded or endangered vessels upon the United States coasts. The general superintendent has supervision over the entire service; and also prepares an annual statistical report on all marine disasters in United States waters, and disasters to United States vessels abroad. The coast line is divided into districts, each under a superintendent, who must be an experienced surfman and familiar with his coast and its inhabitants. He selects the keepers of the stations, and is responsible to the general superintendent for the efficiency of his district. Each station force consists of a keeper and six men. The keeper must be an experienced surfman, he selects his crew and has charge of the property and controls the station service. The stations are in operation from September to May on the sea and gulf coasts, and on the lakes during the navigation season. During these seasons a watch must be kept at all times, and in heavy weather and at night a constant patrol of the coast. In case a wreck is discovered, the station is notified and the entire force is employed in rescuing those on board. So far as practicable also property is saved.

Supervising Architect.[1]—Before 1853 there were comparatively few government buildings, and no systematic method of providing for their construction. The Secretary of the Treas-

[1] *Philadelphia Record,* July 12, 1902, p. 6, "The Government Construction Bureau."

ury was charged with the erection of public buildings, and there was an architect employed by the department; but his duties were mainly as inspector, while the plans for buildings were drawn by local architects and the buildings were constructed under the supervision of a local committee. In 1853 the government owned twenty-three custom houses and eighteen marine hospitals, completed, and had fifteen new custom houses in course of construction, costing $8,887,350. In that year a bureau of construction was organized in the department of the Treasury, with an engineer officer and a supervising architect; and in 1862 the title of the bureau was changed to that of office of the supervising architect.

This office has the following duties: (1) the selection and purchase of sites for government buildings, such as custom houses, court houses, post-offices, mints and assay offices; (2) the preparation of plans for the buildings or the decision between competitive plans from private architects; (3) letting contracts for construction or the actual construction of buildings; (4) leasing of buildings for the public service under the department of the Treasury. The office has a force of architects and draughtsmen, and also superintendents of construction for the inspection of buildings in process of erection.

Custodians of the various government buildings throughout the country are also paid from and attached to the department of the Treasury; but there is no special bureau or system of supervision for this branch of the government service.

The Bureau of Engraving and Printing designs, engraves, prints and finishes all of the steel engraving work for the government; embracing notes, bonds, certificates, national bank notes, internal revenue, postage and customs stamps, treasury drafts and checks, disbursing officers' checks, licenses, commissions, and patent and pension certificates. It is the largest and most complete establishment of the kind in the world. It is under the direction of a chief at $4,500 a year, and is an entirely distinct institution from the Government Printing Office.

The Secret Service is a body of detective agents chiefly con-

cerned with the discovery of frauds and crimes against the national government, particularly counterfeiting coins and currency. Some of its agents are employed in guarding the President; and in time of war its work of espionage is further extended. The service has been established since 1861; and for a few years was attached to the department of State. In 1865 it was transferred to the department of the Treasury, where a special division was established, with a chief as general superintendent of the service and a small staff of clerks to look after the correspondence and reports of the agents. The agents are employed in different parts of the country, wherever their services may be needed from time to time.

CHAPTER IX

The Department of War

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West Point Academy

North American Review, 34:246; 52:23; 57:269; 159:61; 160:668.—*United Service*, 9:366.—*International Monthly*, 3:411.

River and Harbor Works

Chief of Engineers, U. S. A., Annual Reports.—*Lalor's Cyclopedia*, on Internal Improvements.—A. B. Hart: Practical Essays, No. 9.—*Journal of the Franklin Institute*, 65:21; 139:343.—*North American Review*, 24:1; 51:130, 331; 158:343.—*Annals Am. Acad, Soc. and Pol. Sci.*, 2:782.

The history of the department of War, like that of the other departments thus far considered, begins with the Continental Congress; and the machinery for carrying on the Revolutionary War was the first and most important branch of administration which that body had to undertake. In the colonies the management of military affairs had been under the immediate control of the governors, as the representatives of the Crown. The Continental Congress, however, had no single executive; and the early measures adopted were to appoint committees for particular business. One of the first committees of the

Congress was that to consider ways and means to secure ammunition and military stores, established in May, 1775. Other committees followed for special purposes; and as the war progressed grand committees were organized with more general duties. In June, 1776, a board of war and ordnance was established, resembling in form the contemporary British ordnance department, but embracing also the functions of the British secretary for war. It consisted of five members of Congress, and John Adams was the first chairman of the board, which before long assumed the functions of the various other military committees. In October, 1777, a new board of war was established, composed at first of three and later of five members, not delegates in Congress, of which General Gates became chairman in 1778. The former board of war and ordnance, however, continued in existence as a supervising committee of the Congress. In spite of the disadvantages of this system, due to frequent changes in the board and lack of responsibility, it continued until 1781. After a long contest in the Congress it was resolved (February 7) to appoint a Secretary at War; and after eight months' more delay, in October, General Benjamin Lincoln was chosen for the position; and in January, 1782, the new organization was effected and the board of war retired. With the conclusion of peace, the War office became of little importance, but under Henry Knox, who became secretary in 1785, the department was thoroughly organized and well conducted.

In 1789 the act organizing the War department under the constitution was passed, August 7. So far as the management of the army was concerned this made no important changes, and Knox was continued as secretary. The duties of the department were, however, extended to include the management of naval affairs, transferred from the treasury board, the supervision of bounty lands, Indian affairs and one or two other matters. These additional duties have since been removed from the department of War to the department of the Navy (1798) and the department of the Interior (1849).

On the other hand, besides the development of the department in the field of military administration, other functions have been imposed of a non-military character. It has under its charge the improvement of rivers and harbors, carried on by the engineer corps of the army; and since 1898 has had control over the administration of outlying possessions of the United States. Besides its own essential functions, the department of War is thus also a department of public works and a department of the colonies.

To make clear the distinction between the various administrative services under this department, they will be examined under different headings. The strictly military administration includes, first, the organization of the army as a force of combatants, and second, the auxiliary administrative bureaus. After these will be examined the administration of public works and of colonial civil government.

THE ARMY

The Revolutionary War was fought with an irregular army, composed of successive relays of untrained volunteers. The total number of enlistments was 231,791, while in addition there were various bodies of militia estimated at from 60,000 to 100,000; but there were never more than 25,000 men on the rolls at one time, and the average service of each man was less than one year. Until 1777 the company and regimental officers were elected, while Congress appointed only the general officers. Systematic and effective drill and discipline was not introduced until 1778, when Steuben took charge of this work.

In 1783 the army was disbanded, except two small guards of eighty men at Fort Pitt and West Point. The western forts were garrisoned by state militia until 1785, when ten companies of United States troops were organized; and this number was increased in 1789 to 840 men. The following year there was a slight increase; and during the campaigns against the Indians in the Northwest territory the army was raised to 5,000 in 1792, with some state militia also employed; but by 1796 the

number was reduced to 2,800. In 1798, at the time of the threatened war with France, a force of 40,000 plus volunteers was authorized; but only a small portion was enlisted; and after the trouble the numbers were again reduced to less than 3,000. In Jefferson's administration came the more definite organization of a force representing all branches of military service. In 1802, West Point academy was established; and in 1808, a force of 10,000 men in eleven regiments was enlisted in view of the difficulties with Great Britain. Before the War of 1812 broke out, the troops were used in suppressing Indian outbreaks in the Northwest.

During the war of 1812, the authorized strength of the army was raised to 68,000; and the total enlistments reached 85,000, while militia aggregating 470,000 were also called out. But there were never more than 30,000 in the regular army and as many more of militia in service at one time. In the New England states the governors opposed calling out the militia; and although the right of the President was established, this was the last time when the state militia, *as such*, have been employed by the national government. The army was in fact unsuccesful in this war, notably at Detroit, Quebec and Washington, but its record was somewhat retrieved by Jackson's victory at New Orleans. In 1815 the army was reduced to 10,000; and in 1821 to 6,000; and under Calhoun as Secretary of War this army was now established on a permanent basis. In 1818, the staff corps was organized on a system which remained in force until 1901. From 1815 to 1846 the army was engaged in frontier service, and in several Indian wars, *e. g.*, the Seminole War, in 1818; the Black Hawk War, 1831-32; and the Seminole War, 1835-1843.

At the outbreak of the Mexican War the army consisted of 8,200 men; and to carry on this contest a large increase was made. Altogether, 101,280 men were enlisted, 31,000 of them in the regular army; but the maximum strength at one time was 21,700 regulars and 29,000 volunteers. The actual fighting was done mainly by the regular army, now under the con-

trol of officers trained at West Point academy; and in marked contrast with the War of 1812, the military affairs were thoroughly successful.

On the conclusion of peace in 1848, the volunteers were dismissed, and the regular army was again reduced, at first to fifteen regiments with 8,800 men, but in 1855 the number was increased to 12,000. This army was now employed in exploring and surveying expeditions west of the Mississippi, in Indian conflicts, in the Kansas-Nebraska troubles of 1855-6, and in an expedition against the Mormons in 1857.

When the southern states seceded in 1860-1, a fourth of the army officers resigned; and as large a proportion of the enlisted men were made prisoners in Texas at the outbreak of hostilities, leaving only about 8,000 troops as the nucleus for the Union forces. During the struggle the army developed in size far beyond anything ever before seen in America. An increase to 41,000 was authorized for the regular army, but not over 26,000 were enrolled; and the great bulk of the Union troops was composed of volunteers. These volunteers were enlisted, organized and partly drilled by state authorities before definitely enlisting under the national government; and after Bull Run no battles were fought with untrained men. The grand total of enlistments during the Civil War was 2,750,000; and the maximum enrollment was 918,000 in January, 1863, and over a million during 1864 and 1865. But the largest number present in the army at one time was not over 700,000, in January, 1863; and of the million men on the rolls during the last year, not more than 260,000 were with the fighting armies. During this war 93,000 men were killed in battle, 186,000 died of disease, and 25,000 died from other causes.

In 1866 the volunteer forces were disbanded, and the regular army was reorganized with 54,000 men. This number was reduced in 1869; and in 1874 there was a further reduction to 26,000, which remained the authorized strength for twenty-four years. Up to 1887 the greater part of the troops was stationed on the western frontier and engaged in suppressing

Indian outbreaks; but after these difficulties were overcome, during the next ten years more and more of the troops were stationed in permanent posts near large cities. Reference has already been made[1] to the use of troops at Chicago in 1894 to suppress violent interference with the postal service and interstate commerce. They have also been used on various occasions to suppress domestic violence, mainly in the mining regions of the far west, on the application of state governors.[2] During this period following the Civil War the engineer officers came to be largely employed in connection with the extensive river and harbor works undertaken by the national government.

Another sudden increase in the army was brought about by the Spanish War of 1898. During the war with Spain 58,000 men were enrolled in the regular army and 216,000 more in volunteer forces; while 40,000 troops were sent to the field, mostly regulars. These numbers were soon reduced; but the fighting in the Philippine Islands has necessitated a permanent increase in the army. In 1899 a force of 65,000 in the regular army and 35,000 volunteers was authorized. In 1901 the volunteers were disbanded and the regular army was reorganized with an authorized maximum strength of 100,000; but at the present time the total strength of the army is about 60,000 men, of which 25,000 are stationed in the Philippine Islands.

Under Secretary Root (1899-1903) radical changes have been made in the administrative arrangements. In 1901 the staff departments were reorganized, and in 1903 a general staff was established after the model of the armies in continental Europe, and the relations of the national government to the state militia have been reorganized.

At the present time the combatant army consists of thirty regiments of infantry, fifteen regiments of cavalry, and one corps of artillery. Each infantry regiment consists of three battalions, each containing four companies, while every com-

[1] See page 38.

[2] Cf. F. T. Wilson, *Federal Aid in Domestic Disturbances*, Senate Document 209, 57th Congress, 2d session (1903).

pany may have from 68 to 152 officers and men. Each cavalry regiment consists of three squadrons, each with four troops, every troop having from 68 to 103 officers and men. The artillery corps consists of thirty batteries of field artillery and one hundred and twenty-six batteries of coast artillery, with a total of not more than 18,920 men. These army units are organized into brigades, consisting of three or more regiments, each of the three branches of combatants being represented; and further into divisions, each of which consists of three brigades.

In the large European armies there are still larger units, the army corps, each consisting of three or more divisions, under the command of a lieutenant-general or field marshal, which are brought together for field manœuvres on a large scale every year. In the United States even the divisions and brigades, and often the regiments as well, are subdivided and scattered at different posts, and are seldom brought together for field manœuvres.

Entirely independent of the army units are the territorial military districts. The whole territory under the jurisdiction of the United States is divided into five military divisions; and each of these in turn is subdivided into two or more military departments. Each division is under the command of a major-general; and most of the departments are under the command of brigadier-generals. The various bodies of troops and the commanding officers are transferred from one division and department to another according to the needs of the service from time to time.

State militia are under the immediate control of state authorities; but the national government lends important financial and other aid as a means of maintaining higher standards. This aid includes the supply of arms and brief periods of field training under army officers in state and inter-state encampments.

Except during the latter part of the Civil War, the army of the United States has always been recruited by voluntary enlistment. Recruits must be able-bodied men between the

ages of eighteen and thirty-five at the time of their first enlistment. All enlistments are for three years; and desertion within this period is severely punished—in time of war death is the authorized penalty. Reënlistments are encouraged by increase of pay for continuous service, and a retiring pension for those who have served for thirty years.

Army officers are appointed by the President by and with the advice and consent of the Senate. In times of peace, this appointing power is ordinarily limited to graduates of the West Point military academy, and to the promotion of officers mainly on the basis of seniority of service. But during war, or when there is for other reasons an increase in the army, appointments must be made from outside sources, and there is room for political and personal influences. Thus of the 2,900 line officers in 1902, 1,800 had been appointed since the beginning of the war with Spain, and of these but 276 were graduates of West Point academy.

Ordinarily an officer is first appointed as second lieutenant; and by promotion he may become in turn first lieutenant, captain, major, lieutenant-colonel, colonel, brigadier-general, major-general and lieutenant-general. There are now twenty-four brigadier-generals, seven major-generals and one lieutenant-general. For long periods the highest military officer in the United States has been a major-general; and the position of lieutenant-general has been held only by Scott, Grant, Sherman, Sheridan, Schofield, Miles, Young and Chaffee. The higher rank of general has been even more exceptional; and has been given only to Washington, Grant, Sherman and Sheridan. Officers' salaries begin at $1,400 for an infantry second lieutenant, and increase slowly to $3,500 for colonels. Brigadier-generals receive $5,500, major-generals $7,500, and the lieutenant-general $11,000 a year.

MILITARY BUREAUS

Administrative services connected with the management of the army are under the control of the various bureaus of the

War department. The general supervision of all of these bureaus is in the hands of the Secretary of War and an assistant Secretary of War—the latter office established in 1890; both of whom, with their immediate subordinates, are chosen from civil life. Each of the various staff bureaus, on the other hand, is in charge of army officers. Until 1901 assignments to staff positions were permanent; and the higher positions in each bureau were filled by the promotion of officers already in the bureau. But since that date vacancies in these bureaus, except the engineer and medical services, are filled by detailing a line officer for a period of four years, after which he must serve at least two years in the line before again going on staff duty.

The General Staff, established in 1903, is intended to prepare intelligent and effective plans for the conduct of military operations; and it is hoped will also serve to harmonize the civil and military control of the army. Formerly the military officer of highest rank was designated the commanding general; but while his title seemed to imply an authority over the whole army, his specific powers were very limited, and it frequently happened that the Secretary of War preferred to consult with and act on the advice of staff officers of inferior rank. This situation inevitably led to friction between the commanding general and the secretary; which it may be noted has also often been the case in Great Britain, where there is the same attempt to place a civil official above the commanding general.

Under the new system the title of commanding general has disappeared; and in its place there is to be a chief of staff, with the rank of lieutenant-general, to be designated by the President for a period of four years, thus making it possible for each President to select an officer in whom he has confidence. In addition to the chief, the general staff consists of selected officers of various ranks, from captains to major-generals, also assigned to this service for a brief term of years. The principal duties of this general staff are to prepare plans for the national defense and for the mobilization of the military forces

in time of war; to act as an investigation and intelligence office in reference to the efficiency of the army and its preparation for military operations; and to advise the Secretary of War and general officers in coördinating the action of the different administrative bureaus.

The chief of staff has also, under the direction of the President or of the Secretary of War, the supervision of all the troops of the line and of the various administrative bureaus, auxiliary to military operations, which had hitherto been almost independent of each other and of any general control.

The Military Secretary is an office established in 1904, by consolidating the adjutant-general's bureau with the record and pension office. It is the bureau of records, orders, and correspondence of the army and militia. It has charge of the recruiting service; keeps complete records in regard to the personnel of the army (including enlistments, appointments, promotions, resignations, deaths and other casualties); transmits to subordinate officers military orders of the President and Secretary of War; and preserves reports of the military movements and operations of troops. Before the establishment of the general staff, the adjutant-general was the only source of military information, and he advised and prepared many of the military orders, and thus often exercised more powers than the commanding general. Under the present arrangements the military secretary is distinctly subordinate to the chief of staff.

The former record and pension office was organized in 1892 for preservation of the records of the volunteer armies of the United States. Constant reference is made to these records by the pension and treasury officials; but the bureau itself took no direct part in pension administration, and its title was somewhat of a misnomer. Besides the records of enlistment and service in the volunteer armies, the office has the records of the defunct provost marshal-general's bureau, the freedmen's bureau, and also the legislative, executive and judicial archives of the Confederate government. An important work

of this bureau has been the publication of the "Official Records of the War of the Rebellion."

The Inspectors-General are a small force of army officers, the chief holding the rank of brigadier-general, who visit and inspect military stations, depots, fortifications and public works in charge of army officers; and examine and report on the conduct, discipline and efficiency of the officers and troops, the condition of arms, equipment, supplies and government property, the expenditure of money and the accounts of disbursing officers. Every military post must be visited once a year, and the financial accounts are examined three times a year.

The Quartermaster-General has charge of army transportation and of supplies other than food, arms and ammunition. His bureau arranges for transportation by railroad and maintains a fleet of vessels for moving the army over the seas. It furnishes animals, forage, wagons for transport service, clothing, camp and garrison equipment, barracks and storehouses. Large storehouses are owned or rented by the government in a number of important cities, where the various army stores are collected and held for shipment when needed. Before 1901, assignments to this bureau were permanent, and could be made from persons not in the army; but now new assignments are made from line officers for a period of not more than four years.

The Commissary-General of Subsistence, an officer with the rank of brigadier-general, has charge of the subsistence bureau. This provides and issues the regular rations, purchases and distributes articles authorized to be kept for sale to the officers and men, and makes a preliminary examination of the accounts of subsistence expenditure. It maintains large storehouses in various cities and commissary posts with the various divisions of the army, under the charge of army officers chosen as in the quartermaster-general's bureau.

The Surgeon-General has control of the medical service. This is charged with the duty of caring for the sick and wounded, furnishing medical aid and hospital supplies, except

animals, and investigating the sanitary condition of the army. Supply depots and several permanent hospitals are maintained, besides field hospitals when the army is in active operation. Physicians are appointed to the service from civil life, and are given rank as army officers. A corps of nurses and other assistants and employees are also attached to the service.

The Paymaster-General has charge of paying the officers and men and the civil employees of the department, and conducts a preliminary examination of the accounts of the disbursing officers. Officers and men are ordinarily paid once a month. The various paymasters are army officers, with such clerical assistance as is necessary.

The Signal Corps, consisting of 35 officers and 750 enlisted men, has charge of the construction, repair and operation of military telegraph lines, and the collection and transmission of information for the army in the field.

The Judge Advocate-General is the head of the bureau of military justice. All charges and specifications against officers for military offences are prepared in his name; and he receives, reviews and keeps records of all courts-martial, courts of inquiry and military commissions. He reports on applications for clemency in the case of military prisoners. He also acts as legal adviser to the department of War on all questions pertaining to the army, and also in civil matters, such as lands under the control of the department and the erection of bridges over navigable waters. He and the staff of judge advocates are appointed from army officers who have had legal training. The judge advocates act as prosecuting officers and legal advisers to courts-martial and courts of inquiry.

The Board of Ordnance and Fortifications has charge of special investigations in reference to ordnance for fortifications, and general supervision of the construction and armament of such fortifications. The detailed work is, however, performed by the engineer corps and the ordnance bureau. The board consists of six army officers (the chief of staff, one engineer

and one ordnance officer, and three officers from the artillery corps) and one civilian member.

The Chief of Ordnance has charge of the ordnance bureau, which purchases, manufactures and distributes artillery, small arms and all the munitions of war for the fortresses, field armies and state militia. This includes determining the principles of construction, prescribing in detail the models and forms of military weapons, maintaining uniformity and economy in their manufacture and ensuring their good quality. For the manufacture of various arms and ammunition there are eleven arsenals in different parts of the country, the most important of which are the Watervliet arsenal for the manufacture of heavy guns and the Rock Island arsenal and Springfield (Mass.) armory for the manufacture of rifles and ammunition. About seventy army officers are attached to the bureau, besides ordnance sergeants and a large force of clerical and mechanical employees.

PUBLIC WORKS

The Corps of Engineers is not only the engineering branch of the army, but also a department for the construction of public works which have little or no relation to military operations. In its primary capacity, it has charge of the construction of military roads and bridges; and in this direction its work has been mainly confined to temporary works for armies in the field. As a further development of its military activities, the corps of engineers erect permanent fortifications, the most important of these being along the seaboard for coast defence. Their non-military works have included geographical explorations and surveys in the unsettled districts of the country, the construction of river and harbor improvements, and municipal public works in the District of Columbia. The honor men from the West Point academy usually join the engineer corps; and the officers are thus a select body of able and trained men holding permanent positions in the government service. During war, a considerable number of engineers are with the troops

in the field. But the greater number are located at different posts throughout the country in charge of the public works of a definite local district. Several local districts form larger districts under the general direction of higher officers, while the whole corps is under the supervision of the chief of engineers, who holds the rank of brigadier-general.

Important non-military public works have been undertaken by the national government mainly since the Civil War. Gallatin, Secretary of the Treasury, as early as 1808 prepared a plan for an extensive series of canals which should form an inland water route along the Atlantic coast; but this plan was never executed by the government, although some links have been built by private enterprise. In 1807 the government began the construction of the Cumberland road, which was eventually constructed from Maryland into Indiana. But questions as to the constitutionality of such works prevented any large development at that time of national undertakings; and it was left to the states to promote the construction of canals and railroads.

The first appropriation for river and harbor improvements was made in 1822, amounting to $22,000; and small appropriations were made almost annually after 1854, usually under the head of "fortifications." In 1867, the first large appropriation was made, amounting to nearly $9,000,000; and every Congress since then has made large appropriations, showing a strong tendency to increase in amount. The largest annual appropriation has been $25,000,000, in 1900. There is said to be a great deal of "log-rolling" in securing the passage of river and harbor bills, each member of Congress insisting on some appropriation for improvements in his district. Owing to this, there is a considerable part of the expenditure wasted on unimportant works; and still more spent on distinctly local works. A good deal of loss has also been caused by the method of making appropriations only for the amounts to be spent in a single year. When, as often happened, no river and harbor bill became law, the unfinished works were not only delayed

but often seriously injured during the cessation of work. This latter difficulty is now obviated to some extent by authorizing continuing appropriations to cover contracts for the whole of a given undertaking.

Among the important works may be noted the canals around the falls in the Mississippi river at Rock Island, around the falls of the Ohio river at Louisville, and at Sault Ste. Marie, the lake and coast harbors, and the jetties at the mouth of the Mississippi. Large sums have been spent in trying to straighten and deepen the Mississippi and Missouri rivers, but with no valuable results. Works on the lower Mississippi river are under the supervision of a special commission, consisting of three army officers and four civilians. A special commission has also been appointed for the construction of the ship canal from the Atlantic to the Pacific across the isthmus of Panama, and the government of the canal zone.

Independent of the general staff, and standing in direct relations to the Secretary of War are the military academy at West Point, the management of a number of military parks and cemeteries, and the machinery of civil administration in the Philippine Islands.

The United States Military Academy, at West Point, N. Y., is the training school for officers in the army. Established in 1802, the academy was reorganized and put on a firm foundation in 1817, the first results of the new system of training being shown in the Mexican War. For the last fifty years its graduates have constituted a large majority of the officers of the regular army in time of peace; but the officers of volunteer armies and new appointments in the regular army during and after wars have in large measure been appointed from other sources.

General supervision of the academy is maintained by the Secretary of War and a board of visitors consisting of seven members appointed by the President of the United States, two by the president of the Senate, and three by the speaker of the House of Representatives. The superintendent and military

instructors are officers of the army. Cadets are appointed, one from each congressional district, territory and the District of Columbia, two at large from each state, and thirty at large from the United States. Appointments are made by the President of the United States; but by custom all but the thirty at large are selected by the members of Congress. All candidates are subjected to a physical and intellectual examination, which about one-fourth of the appointees fail to pass. The course of instruction lasts for four years, and is largely mathematical, scientific and military, with special reference to military engineering; but includes also modern languages, history, and constitutional and international law. The cadets receive $609.50 a year, and from this must maintain themselves. Graduates receive appointments as second lieutenants in the army, the highest rank men having the preference as to the branch of service, and must serve for two years, after which they may resign from the army.

Postgraduate schools of military instruction for army officers are also maintained now at certain army posts throughout the country. These include a school for engineers at Willett's Point, N. Y., a school for artillery officers at Fortress Monroe, Va., a school for infantry and cavalry officers at Fort Leavenworth, a school for cavalry and field artillery officers at Fort Riley, and the Army War College for the most advanced instruction at Washington, D. C.

Military Parks and Cemeteries.—Several of the most important battle fields of the Civil War have been purchased by the national government and are maintained as public reservations or parks, at Chickamauga, Gettysburg, Shiloh, Vicksburg and Antietam. Each of these parks is under the control of a board of commissioners. At Arlington, Va., is the national military cemetery.

CIVIL ADMINISTRATION

In addition to its distinctively military functions and its management of national public works, the department of War has at several times had charge of the general administration of

government in various districts under the jurisdiction of the United States. The precise nature of the powers exercised and the methods of administration adopted have varied under different conditions.

(1) In suppressing internal disorder, martial law has sometimes been established, this involving the suspension of the writ of *habeas corpus*, and the exercise of judicial powers over private citizens by military tribunals.

(2) In the conduct of war it has often become necessary to establish a military government over the territory occupied as a result of the campaigns. Thus during the Mexican War, such military governments were maintained, not only in the districts afterwards annexed to the United States (California and New Mexico), but also in districts returned to Mexico at the conclusion of the war. During the Civil War similar military governments were established in the southern states; and as a result of the Spanish war they were also maintained for a time in Cuba, Porto Rico and the Philippine Islands. Such military governments are instituted by the President as commander-in-chief of the army and navy, and are carried on under the direction of army officers, who exercise legislative, judicial and executive powers restricted by none of the limitations of either the national or state constitutions. This unlimited authority is based on the existence of a condition of war and ends with the conclusion of peace. Foreign territory temporarily occupied is then restored to its former government; and territory ceded to the United States comes under the control of Congress, although the military government, with restricted powers, may be provisionally continued until Congress otherwise directs.

(3) Over territory ceded to the United States a provisional military government has usually been maintained for a time. On the annexation of Florida in 1821, Andrew Jackson was appointed as military governor with all the powers of the former Spanish captain-general and continued as such for about a year. California and New Mexico remained under military

government after the treaty of peace with Mexico until the one was admitted as a state and the other organized as a territory. And in Cuba, Porto Rico and the Philippine Islands military governments were maintained for some time after the conclusion of peace with Spain, the situation in Cuba being peculiar in that the occupation and military government by the United States were ended by the establishment of an independent Cuban government.

These military governments over ceded territory differ in some respects from the military governments over territory occupied during the progress of war. On the one hand, they may undertake to assimilate subordinate administrative institutions to those prevailing in the United States, and to apply American rules of law in place of those formerly prevailing. On the other hand, it has been held by the Supreme Court of the United States that neither the military government nor the President may impose customs duties on goods sent from the United States to the newly added territory.[1]

(4) Finally a distinctly civil administration of territorial possessions of the United States has in recent years been developed under the supervision of the department of War. In 1900, the President, still acting as military commander and without authority from Congress appointed a civil commission of five members to exercise, subject to the control of the Secretary of War, legislative authority in the Philippine Islands, with power to establish judicial courts and local authorities, but leaving the military commanders as the principal executive authorities. A year later (March, 1901), Congress enacted that all military, civil and judicial powers necessary to govern the Philippine Islands should be exercised under the direction of the President. Acting on this authority the President established a civil executive organization, by appointing

[1] Dooley *v.* U. S., Armstrong, *v.* U. S., 182 U. S. 222. This limitation does not seem to have been considered as applying to the military government of Cuba, which was only temporarily in the occupation of the United States.

the chairman of the commission as governor, and the other four members as heads of administrative departments; while three Filipinos were added to the commission in its legislative capacity. In 1902, Congress passed an act on the government of the Philippines, which approved, ratified and confirmed the action of the President.

Besides enacting general legislative measures, the Philippine commission has organized a judicial system, central administrative machinery, and provincial and municipal institutions, the latter including a representative element elected by the inhabitants of the various districts. This machinery of civil government is entirely separate from the military commanders in the islands; and although under the supervision of the Secretary of War, this supervision is exercised through a special bureau, independent of the general staff and the military bureaus.

The Bureau of Insular Affairs has charge of matters relating to the civil government of the insular possessions of the United States subject to the jurisdiction of the department of War. At present this applies only to the Philippine Islands; but the records of the bureau deal also with Cuba and Porto Rico during the period in which they were under the jurisdiction of the department of War. The bureau receives all the civil records of the Philippines; and from these prepares and publishes official documents, including statistics of commerce. It makes a comptroller's review of the receipts and expenditures of the Philippine government; purchases supplies and arranges for the transportation of supplies and employees to the Philippine government. A law officer investigates and reports on legal questions connected with civil administration in the islands. The chief of the bureau is an army officer; but most important questions receive the personal attention of the Secretary of War.

CHAPTER X

The Department of the Navy

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The Marine Corps

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THE NAVY

As early as October, 1775, the Continental Congress appointed a committee to fit out vessels to intercept and capture British merchant ships; and during the Revolutionary War several small squadrons were prepared and sent out, under the direction of various committees of Congress. There was, however, no permanent organized navy and no ships specially built as men of war. Most of the naval fighting in behalf of the United States was done by privateers—notably John Paul Jones—who employed merchant vessels equipped with guns as cruisers, and directed their attention mainly to attacking British merchant vessels. At the end of the Revolution, the ships of the Confederation navy had been mostly captured and de-

stroyed; the three which remained were sold and the navy abolished.

In the organization of the administration under the constitution of 1787 the department of War was given jurisdiction over naval matters; but nothing was done in the way of naval construction until 1794, when six frigates were ordered. Afterwards additional ships were bought and built; and in 1798 the United States had a small navy, consisting of 22 ships, 456 guns and 3,484 men. In this year the control of the navy was taken from the department of War and given to the newly established department of the Navy. During the next few years the navy saw active service against France (1798-1801), and in the expeditions to Algiers and Tunis for the suppression of the Barbary pirates (1801-1804). Under Jefferson, naval construction was stopped, and the number of vessels in commission was reduced from twenty-five to seven; but when the conflict with England and France over the rights of American neutral vessels became acute a large number of useless gunboats were built (1806-1812).

When the War of 1812 broke out the United States had sixteen effective war vessels, the largest being three 44-gun frigates. These rendered a good account of themselves in a series of ship duels with vessels of their own class, as did also "Commodore" Perry with his improvised fleet on Lake Erie. The success of the navy was in marked contrast to the work of the army, although even at the end of the war the United States had not a single one of the standard three-decker battleships of the time.

From 1815 to the Civil War there was but little development in the navy. A small number of ships were built, and steamers to some extent replaced sailing vessels. On several occasions this small navy was engaged in active service. It was employed in suppressing Mexican pirates (1814-1819), against Malay pirates in the far east (1831), in the Mexican War, in suppressing the slave trade, and in opening Japan (1852) and China (1856-59) to commercial relations with the western

world. In 1842 the administrative bureaus of the Navy department were organized along lines maintained until the present time.

At the opening of the Civil War the navy consisted of twenty-six steamers and sixteen sailing vessels in commission, with twenty-seven minor boats employed at the navy yards. The conduct of the war led to an enormous expansion of the naval service, a revolution in construction and armament, and striking developments in methods of naval warfare. At the end of the war the United States navy consisted of no less than 600 vessels of all types. Sailing vessels had almost entirely given way to steamships; where formerly vessels had been entirely of wooden construction, iron-clad vessels had come into use; and the old smooth-bore guns were being replaced by rifled cannon. Naval operations included sea fights with Confederate privateers, the blockading of southern ports, and—most notable of all—the use for the first time of vessels in attacks on land fortifications, notably at Vicksburg and Mobile.

After the war the navy, like the army, was rapidly reduced; and for twenty years nothing was done to keep pace with the rapid developments in naval construction that had been inaugurated in our own country. Almost the only vessels built for the navy in this period were some additional iron-clad monitors ordered in 1865 and reconstructed in 1874. An advisory naval board, appointed in 1881, reported that of the sixty-one unarmored cruisers then on the navy list, only thirty-two were available for service; and recommended the addition of thirty-eight modern cruisers, as well as thirty smaller vessels.

Two years later the new navy was begun by the construction of four modern cruisers of the second class. Systematic development was, however, inaugurated by Secretary Whitney (1885-1889), whose policy embraced the reorganization of naval administration, the construction of a new navy and the production of all materials for war ships as well as the vessels themselves within the United States. For some years cruisers

and minor vessels only were constructed; but beginning in 1890 first class battle ships were ordered. At the beginning of 1904 there were 252 vessels fit for service, including eleven battleships and nineteen cruisers of modern types, besides coast defense monitors, torpedo boats, gunboats and auxiliary vessels. In addition, forty-five new ships are under construction or authorized, including fourteen first class battle ships, ten armored cruisers and five protected cruisers, which will almost double the effective fighting capacity of the navy. Among the navies of the world that of the United States is clearly surpassed only by those of Great Britain and France, and is about equal to that of Germany.

During the Spanish War the new navy was uniformly successful, notably at the battles of Manilla Bay and Santiago. To its work was due in large measure the early conclusion of the struggle.

Each vessel in the navy is an indivisible unit for naval movements; but the grouping of vessels into larger commands is subject to frequent change. At present there is a North Atlantic fleet, divided into a coast squadron and a Caribbean squadron; an Asiatic fleet, divided into a Philippine squadron and a cruiser squadron; and also a Pacific squadron, a South American squadron and a European squadron. Within each squadron there are usually a number of divisions. Each vessel, division, squadron and fleet is under the command of a definite officer.

The personnel of the navy consists of 29,000 enlisted men and 1,600 commissioned officers, besides the marine corps of 7,000 officers and men. Enlistments, as in the army, are voluntary and for terms of four years. Formerly men were picked up at haphazard, and the crews of the navy vessels were very largely of foreign birth and citizenship. In 1881 an apprentice school was established at Newport, R. I., and more recently another in San Francisco Bay, where young boys are enlisted and trained for the service. These schools are now the most important source of supply for enlisted men;

and under this system the proportion of American citizens in the navy crews has increased to 90 per cent., and of native-born Americans to 70 per cent. The pay of the enlisted men ranges from $9 a month, for the third grade of apprentices, to $35 a month; while petty and warrant officers (boatswains, gun captains and machinists) receive up to $1,800 a year.

Officers are appointed, as in the army, by the President and Senate, but with very few exceptions appointments to positions in the line are made from graduates of the naval academy.

When the Continental Congress first provided for a navy, the principal officer was given the vague title of commander-in-chief; but in 1776 the English titles for naval officers were adopted, although no appointments were made to the higher ranks. Since 1862 the rank of midshipman, formerly given to the lowest officer of the line, has been confined to cadets at the naval academy and graduates while awaiting their commissions. The lowest commissioned officers are now called ensigns, a rank corresponding to that of the second lieutenants in the army. Next in order are the lieutenants (junior grade) and lieutenants, the latter ranking with an army captain, and usually acting as an officer of the watch, navigating officer or in command of minor vessels. Above these stand the lieutenant-commanders (a rank established in 1862), commanders (established 1838), and captains, the last named—corresponding in rank and salary to army colonels—having charge of the large cruisers and battle ships.

Up to 1862 the highest official naval rank in the United States was that of captain, except for the designation of a senior flag officer in 1859; although the title commodore was popularly given to officers in command of a squadron. An act of 1862 reorganizing the naval personnel established the minor official ranks of ensign and lieutenant-commander, and also the higher ranks of commodore and rear-admiral for officers in command of a division, squadron or fleet. In 1864 Farragut was commissioned as vice-admiral, and in 1866 as admiral. He was succeeded in both ranks by Porter; but

after him the titles again lapsed until 1899, when Dewey was made admiral. There are now twenty-seven rear-admirals, but no vice-admiral, and the rank of commodore has also been abolished, except for its survival on the retired list.

Officers' salaries are about on the same scale as in the army: from $1,400 a year for ensigns to $7,500 a year for the first nine rear-admirals; but these amounts are reduced when the officers are on shore duty. The admiral receives $13,500 a year.

Engineer officers in the navy have until recently occupied a peculiar position. They were first appointed with the introduction of steam vessels in 1836; and in 1842 a special corps of engineers was established. As, however, the engineers had no training in navigation or naval warfare, they were not considered on an equal footing with officers of the line. As those officers became of more and more importance with modern developments in naval affairs, their dissatisfaction with their subordinate position steadily increased, especially on account of the contrast with the position of engineer officers in the army.

With the object of overcoming these difficulties an act was passed in 1899 to grant the officers of the corps of engineers commissions in the line; and providing that, on passing examinations in navigation, engineer officers might be asisgned to positions as commanding officers, while line officers by qualifying in engineering could be assigned to engineering posts. Future officers are to be trained in both branches of the service, and transferred from one to the other as may be convenient. Under this act some former engineer officers have been transferred to navigation positions; but there has been no corresponding transfer from the line to the engine room.

Naval constructors, civil engineers, paymasters, surgeons and chaplains in the navy are appointed from outside of the graduates of the naval academy; but are assigned rank as naval officers of different grades.

The Marine Corps is not in the strictest sense a branch of the

naval service, but a force of soldiers, organized apart from the regular army for service supplementary to naval movements. It was established by the Continental Congress in 1775. The men are enlisted and organized in much the same way as in the army; but the officers are appointed mainly from the graduates of the naval academy, the chief officer now holding the rank of major-general. Detachments are assigned to the ships of the navy, where they perform guard and police duties and act as sharpshooters in active service. On shore they do guard duty at the navy yards; and carry out small military operations, sometimes preliminary to a larger movement by the army. The corps has its own administrative service in three branches: adjutants and inspectors, quartermasters and paymasters.

ADMINISTRATIVE BUREAUS

As in the case of the army, the administrative services connected with the navy are under the general supervision of the secretary of the department and an assistant secretary (the latter established in 1890), both chosen from civil life and serving in office for a brief period. Under their direction are a series of bureaus, which, differing from the present arrangement in the department of War, are independent of each other and not organized under a general staff. There has been some discussion in reference to establishing a general staff for the navy; but as yet no permanent machinery of this kind has been established. During the Spanish War a board of strategy was temporarily formed to give military advice upon the strategic movements of the fleet. And more recently there has been established a general board, with the admiral of the navy at its head, to discuss the larger questions of policy connected with offensive or defensive measures in case of war with different countries. There is also a board of inspection and survey, composed of naval officers, which is not attached to any of the more elaborately organized bureaus.

The principal bureaus may best be considered in the order in which they act in preparing a ship of war for active service:

yards and docks, construction and repair, steam engineering, ordnance, equipment, supplies and accounts, medicine and surgery, and navigation. Most of these are in charge of a line officer of the navy, usually a rear-admiral; and other naval officers are assigned to bureau duties, this service alternating with service at sea. But officers in the bureaus of construction, supplies and medicine, although ranking as naval officers, are appointed from outside sources and permanently attached to their special branch of the service. All of these bureaus, it may be noted, have representatives on each vessel of the navy, except that of yards and docks.

Other officers and institutions connected with the department of the navy are: the judge advocate-general, the marine corps, the naval academy and schools for the training of officers and enlisted men.

The Bureau of Yards and Docks has control of the general administration of the navy yards and government docks, including the purchase of land, and the construction and maintenance of docks, buildings and apparatus. There are navy yards at Washington, D. C., Boston, Brooklyn, N. Y., League Island, Pa., Norfolk, Va., Pensacola, Fla., Mare Island, Cal., Cavite in the Philippine Islands, and other places throughout the country. At these yards there is some ship-building and ordnance manufacture done; all vessels receive their finishing equipment, supplies and crews; and most of the repair work is performed. Each yard has a local branch and local representatives of the various bureaus of the navy department with a naval officer in general charge.

The Bureau of Construction and Repair is responsible for the hulls and permanent fixtures of the ships of the navy. In consultation with the bureau of ordnance it designs plans for vessels; it has charge of construction and repair work in the navy yards, and supervision over construction of ships by contract. Besides the ordinary questions of marine architecture involved in the construction of hulls, spars, steering gear and ventilating apparatus, it deals with many special features

peculiar to war vessels, such as armor, gun turrets, ammunition hoists and other accessories of the armament.

The Bureau of Steam Engineering deals with the steam machinery for the navy, including not only engines for propelling the vessels, but also steam pumps, steam heaters and machinery for moving the gun turrets. It makes designs for such machinery, supervises its construction and installation, and has charge of its operation.

The Bureau of Ordnance has control of the armament and ammunition for the navy. It coöperates with the bureau of construction and repair in determining questions as to the armor of vessels, gun turrets and ammunition hoists. It designs and supervises the manufacture of guns, torpedoes and other armament; and installs the armament and all accessories not permanently attached to the hulls. It has charge of the torpedo station, the naval proving ground, powder magazines on shore, and the gun factory at the Washington navy yard.

The Bureau of Equipment has charge of what may be called the furnishings of the ships. This includes the installation of electric motors and lighting systems; a great variety of portable apparatus, such as rigging, sails, ropes, anchors, lamps, compasses and other navigating instruemnts; also charts, log books and other nautical publications; and the supply of illuminating oil and fuel. Under this bureau are the hydrographic office, in charge of deep sea surveys and the publication of charts, the naval observatory and the publication of the nautical almanac. The publications of these offices are of great service not only to the navy, but also to the mercantile marine.

The Bureau of Supplies and Accounts deals with the supply of provisions, clothing, and small stores, and the payment of salaries, wages and the accounts for stores purchased by other bureaus. Its chief officer is the paymaster-general; and the paymaster of each ship in commission is its representative.

The Bureau of Medicine and Surgery has charge of the naval hospitals and the medical corps of the navy. The chief officer

is the surgeon-general. Surgeons in the medical corps are appointed from civil life and given rank as naval officers. They are graded as assistant surgeons, passed assistant surgeons, surgeons, medical inspectors and medical directors.

The Bureau of Navigation has charge of the personnel of the navy; and in the absence of a general staff tends to become of much the same importance in advising the military orders of the Secretary of the Navy as was the adjutant-general in the army before the recent reorganization. It must be distinguished from the bureau of the same name in the department of Commerce and Labor, which exercises supervision over the mercantile marine but has nothing to do with the navy. This bureau has charge of the recruiting service and supervision over the training of officers and men, including the naval academy, technical schools for officers and enlisted men, and the apprentice schools. It establishes the complement of the crews of all vessels in commission; and prepares naval regulations and books on drill and tactics. It issues, and often advises, the orders of the Secretary of the Navy in reference to the movement of vessels and squadrons. And it keeps the records of service of all squadrons, ships, officers and men.

Auxiliary to the bureau of navigation are some minor boards and offices. In connection with the examinations for the promotion and retirement of officers there is a naval examining board of line officers, a naval retiring board of line officers and medical directors, and a board of medical examiners. The office of naval intelligence collects information as to naval progress in foreign countries, including developments both in naval construction and in the art of naval warfare. The office of naval war records preserves the records of the navy personnel and has charge of the library of the department. It is also publishing the official records of the United States and Confederate navies in the War of the Rebellion.

The Judge Advocate-General of the navy performs similar duties to the same officer in the army, with some others peculiar to the navy office. He has to do with courts-martial and

courts of inquiry, in some cases ordering these courts and preparing charges and specifications, and in all cases reviewing and reporting on the proceedings. Judge advocates are designated as prosecuting officers and legal advisers in such military trials. The judge-advocate-general also orders the examinations of candidates for appointment to the medical corps; and orders and reviews the examinations of naval officers for promotion and retirement. He is further the legal adviser of the department and as such is called on for opinions in reference to the construction of statutes, regulations, and the powers of officials, these opinions forming an important body of administrative law. As legal adviser, too, he has important duties in connection with the construction of navy vessels under contract; preparing advertisements for bids, forms of proposals, forms of contracts and bonds; and this involves a great deal of departmental correspondence in reference to the plans and specifications and proposed changes. He also conducts correspondence with the department of Justice in reference to cases before the courts affecting the department of the Navy.

The United States Naval Academy, at Annapolis, Md., was founded in 1845, without specific authority from Congress, by Secretary of the Navy George Bancroft. Efforts to establish a school for the navy similar to the military academy had been made since the War of 1812; and after the institution was organized it was recognized and supported by Congress. During the Civil War the naval academy was removed to Newport, R. I., but returned to Annapolis at the close of hostilities.

A board of visitors is appointed as for the military academy. A naval officer not below the rank of captain is assigned as superintendent of the naval academy, and other naval officers as instructors in various subjects, with some appointments as instructors from outside of the navy. The course at the academy continues for four years, and includes instruction in naval construction, ordnance and gunnery, steam engineering, seamanship, navigation, and naval tactics, besides introductory

work in mathematics and physical sciences, and courses in modern languages and constitutional and international law.

Appointments as naval cadets or midshipmen are made by the President from congressional districts, states and territories, with some at large, the local appointments being usually selected by the members of Congress. In order to keep pace with the rapid development in the number of ships in the navy, it has been provided that until 1913 two midshipmen should be appointed for each member or delegate in Congress and five at large each year.

After the course at the academy, midshipmen complete their preparations by a two years' course at sea, after which they receive appointments as line or engineer officers. Most of the naval officers, except those in the medical corps, are graduates of the naval academy; and this tradition of common education and the personal acquaintance resulting from the transfers from one ship to another has developed a much stronger *esprit de corps* than in the army, where many of the officers have entered the service through the volunteer armies.

A Naval War College for postgraduate study of problems in naval strategy and tactics has been maintained at Newport, R. I., since 1885. About twenty-five officers are assigned for this purpose every year. At the same place is a torpedo station, where instruction in the construction and use of torpedoes is given.

Many of the rules and customs of international law apply specifically to naval administration; and a few of the most important may be noted here. Navy vessels frequently enter the ports of foreign powers in time of peace; but they are considered as exempted by the consent of such powers from their jurisdiction, and as remaining under the exclusive jurisdiction of the home government exercised by the officers of the ship itself.[1] When, however, officers and crew go ashore in a foreign country they cannot claim diplomatic privileges, but come under the jurisdiction of the foreign country.

[1] 7 Cranch, U. S. 116.

Naval warfare differs from warfare on land in that the seizure of private property without compensation is still permitted. This applies not only to contraband goods, but also to vessels caught running a blockade, vessels carrying contraband goods, and vessels and their contents owned by a citizen of the enemy country. All captured vessels are sent to a convenient port for a trial before a prize court as to whether it is a lawful prize. If condemned as a prize, the vessel is sold, or may be taken by the government at an appraised value; and the proceeds are shared by the captors as prize money. If the prize was of superior or equal strength to the capturing force, all the net proceeds goes to the officers and crews. If the prize was of inferior force, one-half of the net proceeds goes to the United States; and income from this source is now used as a fund for naval pensions. The prize money assigned to the capturing vessel or vessels is distributed according to statute, the commanding officers getting large fractions, and the remainder being divided among the other officers and enlisted men in proportion to their service pay.

A small amount of civil administration is exercised by the department of the Navy in the islands of Tutuila (in the Samoan group) and Guam. Congress has made no provision for government in these islands since their acquisition by the United States; and they remain under the command of naval officers, who may be said to be exercising a temporary military government.

CHAPTER XI

The Department of Justice

References.—J. S. Easby-Smith: The Department of Justice.—Opinions of the Attorney-General of the United States.—*American and English Encyclopedia of Law*, I, 974; V, 713.—*Cyclopedia of Law and Procedure*, IV, 11024.—*American Law Register*, 5:65.—*Law Reporter*, 13:373; *Copp's Land Owner*, 3:54, 57.—*American Law Review*, 21:779.

The department of Justice has been developed from the English office of attorney-general, with important features added in the course of American experience. As early as the reign of Edward I, almost contemporaneous with the appearance of a special legal profession in England, we find Crown attorneys (*Attornati Regis*) employed for guarding the royal privileges in the courts. By the time of Edward IV the official title of attorney-general appears for the first time. A little later, as the distinction between barristers and solicitors became established, the Crown lawyers are distinguished as the King's attorney and the King's solicitor.[1]

These law officers acted as the legal advisers of the King and his ministers, and also conducted public prosecutions in important criminal cases. But there was not developed, and has not yet developed, in England any system of local public prosecutors. Nor has the English attorney-general become one of the leading political officials with a seat in the cabinet, since political and administrative functions, which have become attached to the office in this country are there performed by the lord chancellor and other officials.[2]

Most of the colonies had attorneys-general; and these officers

[1] Gneist, *History of the English Constitution*, ch. 22.

[2] Anson, *Law and Custom of the Constitution*, II, 201.

were continued under the state governments. In the national government the office of Attorney-General was provided for in the Judiciary Act of 1789. For a good many years the work of the office did not require the entire time of the Attorney-General and he was permitted, if not expected, to continue in private practice. The salary was only $1,500 a year, less than that of the other cabinet secretaries; and not until 1814 was he required to reside in Washington. From the first the Attorney-General was a member of the President's Cabinet; but his office was not formally recognized as an executive department until in 1870 the department of Justice was established.

The functions of the Attorney-General and the department of Justice may be considered in four main divisions: (1) as legal adviser to the President and the executive departments; (2) as attorney for the United States before the courts, either as prosecutor or defendant; (3) administrative supervision over officers of United States courts and over United States penal and reformatory institutions; and (4) as adviser to the President in the exercise of his pardoning power.

It is the duty of the Attorney-General to give his advice and opinion upon questions of law when required by the President or by the heads of departments on any matter concerning their departments. Questions not involving the construction of the constitution of the United States may be referred to subordinates; and their opinions when approved by the Attorney-General have the same force and effect as the opinions of the Attorney-General himself. Officers in the department of Justice must give opinions and render legal services to the President or officers of other departments.

In the discharge of these duties the action of the Attorney-General is quasi-judicial. "His opinions officially define the law, in a multitude of cases, where his decision is in practice final and conclusive—not only as respects the action of public officers in administrative matters, who are thus relieved from the responsibility which would otherwise attach to their acts,—

but also in questions of private rights, inasmuch as parties having concerns with the government possess in general no means of bringing a controverted matter before the courts of law, and can obtain a purely legal decision of the controversy, as distinguished from an administrative one, only by reference to the Attorney-General. Accordingly, the opinions of successive Attorneys-General . . . have come to constitute a body of legal precedents and exposition, having authority the same in kind, if not the same in degree, with decisions of the courts of justice."[1] "The Supreme Court will not entertain an appeal from his decision, nor revise his judgment in any case where the law authorized him to exercise his discretion or judgment."[2]

But the Attorney-General is under no obligation to render an award, or determine a question of fact in cases referred to him; nor does an appeal to him lie from another department by any party assuming to be aggrieved by its action, and seeking to have it reviewed; nor is he to give advice to heads of departments on matters which do not concern their departments, and in which the United States have no interest; nor is he authorized to give official opinions not falling within the scope of his duties, so as to connect the government with individual controversies, in which it has no concern; nor is he in general to give official opinions to subordinate officers of the government; nor in cases not actually presented for action by an executive department.[3] He will not answer abstract or hypothetical questions of law;[4] nor purely judicial questions in controversy before the courts;[5] nor construe department regulations. He may, like the heads of other departments, be required to furnish information to Congress; but he does not furnish legal opinions to Congress, or its committees.[6]

[1] 6 Opinions Attorney-General, 326; *American Law Register*, 5:72.
[2] 6 *ibid.*, 346.
[3] 6 *ibid.*, 333; 10 *ibid.*, 50, 458; 11 *ibid.*, 189, 431.
[4] 13 *ibid.*, 568.
[5] 20 *ibid.*, 539; 23 *ibid.*, 221, 558.
[6] 14 *ibid.*, 17, 177; 15 *ibid.*, 138, 475; 18 *ibid.*, 87, 107.

More specifically, it is the duty of the Attorney-General and his assistants to examine all titles to land or sites purchased by the United States for the purpose of erecting public buildings; and no money can be expended for land until the title has been approved.

As chief advocate for the government, the Attorney-General has supervision over all actions at law or suits in equity to which the United States is a party or in which the United States has an interest. Suits begun by the government are brought before a district, circuit or the Supreme Court of the United States under the provisions of the statutes regulating the jurisdiction of these courts. Criminal cases include only crimes in violation of the statutes of the national government. The largest number of prosecutions are for violations of the internal revenue laws; a considerable number are for violation of postal laws, customs laws and pension laws; while a great variety of other statutes are involved in other cases. Civil suits are brought most largely in connection with customs and internal revenue administration; but all of the departments are involved in some cases. Besides cases in which the United States is itself a party, it has been held that in a suit between states where the United States has an interest, the Attorney-General may appear and introduce evidence and argument without making the United States a party for or against whom judgment may be rendered.[1]

Following the rule of English law, suits against the United States government are not allowed as a matter of right.[2] But provision has been made for trying some kinds of claims against the government by the creation of a court of claims and a court of private land claims;[3] while claims for small amounts may be brought before the district and circuit courts of the United States, and claims under treaty stipulations are

[1] 17 Howard, U. S. 478.

[2] Not even the Attorney-General can waive the exemption of the United States from judicial process or submit United States property to the jurisdiction of the court in a suit against its officers. 162 U. S. 255.

[3] The latter was abolished in 1904.

investigated by special commissions. In all these cases the officers of the department of Justice act as attorneys for the defense on the part of the government.

According to the statutes, the Attorney-General is to conduct and argue cases before the Supreme Court and the Court of Claims, except where other provision is made for particular cases. In fact, cases in the Court of Claims are now placed in the hands of one of the assistant attorneys-general; and even before the Supreme Court many cases are conducted without the personal appearance of the Attorney-General. In the subordinate courts the Attorney-General very seldom appears in person.

In the countries of continental Europe the minister of justice appoints, or at least selects, the judges; and exercises through his department a large administrative control over the judiciary. Even in England, the lord chancellor selects most of the judges and has disciplinary powers over the judges in the lower courts, as well as some minor supervision over the higher courts. Compared to the practice of foreign countries, the powers of the Attorney-General over the judicial administration are very limited. He has no power of appointing judges; and while he may be consulted by the President in reference to a judicial appointment, there is no established custom of asking his advice, still less of accepting his recommendations. And the position of the judiciary as an independent branch of the government, coördinate with the legislative and the executive, prevents any control over their judicial acts. Nevertheless, the Attorney-General has some powers of administrative supervision over the executive officers of the courts, similar to those of a European minister of justice, which serve to make his position of more importance in the national administration than that of the attorneys-general in the states.

Commissions to judges and other officers of the United States courts are now made out and recorded in the department of

Justice.[1] The Attorney-General has general superintendence over the district attorneys and marshals of the United States and territorial courts, who must submit reports of their official proceedings; and supervision over the accounts of district attorneys, marshals and clerks, and over expenditure for supplies for the United States courts.[2]

In addition to this supervision over the executive officers of the United States courts, the Attorney-General has general direction over United States prisoners and the penal and reformatory institutions of the United States. These include national penitentiaries at Leavenworth, Kans., and Atlanta, Ga., and the jail and two reform schools in the District of Columbia. Many prisoners convicted in the national courts are sentenced to these reform schools and also to the state penal and reformatory institutions.

As the power to pardon is specifically conferred on the President by the constitution, it is not possible to delegate this power to any subordinate officer or department. But in practice petitions for pardon (except in army and navy cases) are referred to the department of Justice for investigation; and the President usually acts in accordance with the recommendation of the Attorney-General.

Next to the department of State, the department of Justice has the smallest staff of any of the executive departments. The whole number of persons in the offices at Washington is now about 250. On the other hand, on account of the large number of attorneys employed, the average salary in the department of Justice is higher than in any other department.

After the Attorney-General himself, the most important official is the solicitor-general, who assists the Attorney-General in the performance of his general duties, and in his absence or in case of vacancy exercises all the duties of the Attorney-General. The solicitor-general ordinarily acts mainly in connection with suits before the courts. He coöperates with the Attorney-

[1] Act of August 8, 1888, c. 786.

[2] *Revised Statutes*, §§ 362, 368; Act of March 3, 1899.

General in cases before the Supreme Court and the Court of Claims; but may also be directed to conduct cases where the United States has an interest in the lower courts of the United States or in any state court.

Other important law officers are: the assistant to the Attorney-General, the assistant attorneys-general and the solicitors for various executive departments. There are six assistant attorneys-general with general duties. These assist in the preparation and argument of cases before the Supreme Court and in the preparation of legal opinions; one is charged with the conduct of the defense of the United States in the Court of Claims; one with the defense of Indian depredation claims; one with the defense of claims before the Spanish treaty claims commission; and one with matters relating to insular and territorial affairs, and with the defense of French spoliation claims. Special assistants to the Attorney-General are also engaged from time to time, for particular purposes, as in the enforcement of the anti-trust laws.

Other assistant attorneys-general and solicitors deal with cases and legal questions affecting particular executive departments. Since 1870 these law officers for the other departments exercise their functions under the supervision and control of the Attorney-General.

The solicitor for the department of State gives advice upon questions of municipal and international law referred to him; and passes upon claims of citizens of the United States against foreign governments and claims of citizens of subjects or citizens of foreign governments against the United States, and upon applications for the extradition of criminals.

The solicitor of the Treasury deals with law matters affecting all the bureaus of the department of the Treasury except those under the internal revenue laws. He has cognizance of frauds on the customs revenue and the collection of moneys due the United States; he must approve the bonds of treasury officials; and he has supervision over suits brought under the national banking law.

The solicitor of internal revenue is the law officer and legal adviser of the commissioner of internal revenue.

The assistant attorney-general for the Post-Office department gives legal opinions on questions relating to the work of the department. He considers claims from postmasters for loss caused by fire, burglary or other casualty; all cases of alleged violation of the fraud and lottery laws; and applications for pardons for crimes against the postal laws.

The assistant attorney-general for the department of the Interior gives legal advice to the secretary of the department on appeals from the land office and on other legal questions arising in the administration of the department.

All of these officers are assisted by assistant attorneys, law clerks, stenographers, clerks and interpreters. One attorney is given charge of applications for pardon referred to the department. Another has charge of questions connected with the title to land owned or sought to be acquired by the government.

The chief clerk supervises the work of the clerks and minor employees of the department; and has charge of the mail and supplies. The general agent has charge of matters relating to United States prisoners, directs the special agents who examine the offices and records of United States court officials, and has supervision over the division of accounts. The division of accounts examines and audits the accounts of the officers of the United States courts, and compiles estimates for annual appropriations. The disbursing clerk disburses the funds for paying the salaries in the United States judicial service, and in the department of Justice. The appointment clerk has charge of applications and recommendations for appointments and the preparation of commissions.

An examination of the organization and jurisdiction of the United States judicial courts does not fall within the scope of this work; as the judiciary forms a separate and independent branch of the government. But the executive and administrative officers of these courts must be considered as the local

agents of the department of Justice. These officers are the district attorneys and marshals of the courts.

Local government attorneys were unknown both in England and the American colonies. Criminal prosecutions were ordinarily begun by private individuals; while the specially important criminal cases and civil cases requiring a government attorney were attended to by the attorney-general and his immediate staff. But the Judiciary Act of 1789, organizing the United States courts, provided that in each judicial district there should be an attorney of the United States to conduct government business in the courts. At first these district attorneys were paid by fees, and probably gave only a part of their time to government matters. But with the development of public prosecutions in criminal cases, they have become permanent salaried officials; while a corresponding class of officials has also been developed in the states.

District attorneys are now appointed, by the President and Senate, for each of the eighty-six judicial districts of the United States. Their terms are four years, and their salaries vary from $2,000 to $6,000.[1] In most districts there are one or more assistant attorneys and clerks.

It is the duty of each district attorney to prosecute, in his district, all delinquents for crimes and offenses cognizable under the authority of the United States, and all civil actions in which the United States are concerned. In certain cases he must act as attorney in suits where officers of the United States are parties; unless otherwise instructed by the Secretary of the Treasury, he must appear in behalf of the defendants in all suits against collectors or other revenue officers in connection with their official duties; and he must conduct suits and proceedings under the national banking law which involve United State officers.[2]

[1] The District Attorney for the southern district of New York is, however, still paid by fees; and as this is the most important district in the country these amount to very large sums, and are said to give this officer a larger net income than the salary of the President.

[2] *Revised Statutes*, §§ 380, 381, 771.

From this statement it will be seen that the duties of the district attorney are analogous to the court functions of the Attorney-General. The district attorneys, in fact, stand in much the same relation to the district and circuit courts as does the Attorney-General to the Supreme Court. They are, as has been noted, under the general superintendence of the Attorney-General; but it has been held that this does not authorize him to control the actions of the district attorneys by general regulations.[1]

One of the most important branches of the work of district attorneys is their control over criminal prosecutions. Limited as they are to crimes against the authority of the United States, this function is of less importance than that of the prosecuting attorneys in the states; but within thier own field they have the same influence. It depends to a large extent on their action to secure an indictment, and to carry on the prosecution so as to secure conviction.[2] But in case of neglect of duty, the supervision of the Attorney-General is more likely to secure the removal of the delinquent official than in the states.

United States marshals were also a new creation of the Judiciary Act of 1789; but their functions correspond to those of the old English office of sheriff. Marshals are appointed by the President and Senate for each judicial district of the United States for a term of four years. Each marshal has a number of deputies to assist in the duties of the office.

It is the duty of each marshal to attend the district and circuit courts of the United States when sitting in his district; and to execute throughout the district all lawful precepts directed to him and issued under the authority of the United States. The marshals and their deputies have in each state the same powers in executing the laws of the United States as the sheriffs in such state have in executing its laws.[3] They make arrests and carry out the judgments of the courts, seizing and

[1] Fish *v.* U. S. (D. C.) 36 Fed. 677.
[2] Cf. U. S. *v.* Schumann, 7 Sawyer (C. C.) 439.
[3] *Revised Statutes*, §§ 787, 788.

selling property under civil judgments, and transferring convicted prisoners to the place of confinement. They stand in the same relation to the peace of the United States as a sheriff to the peace of the state.[1] Under the act of 1789 it was considered that they had implied power to summon the military forces of the United States as a *posse comitatus;* but the act of 1878 prohibited the use of the army in this way except when expressly authorized by the constitution or acts of Congress.[2]

[1] 135 U. S. 63, 69.
[2] 16 Opinions Attorney-General, 162.

CHAPTER XII

The Post-Office Department

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THE POSTAL SERVICE

While the highly organized and elaborate postal service of to-day is of distinctly modern development, its earliest origins are to be found in the period of antiquity. From primitive beginnings there developed under the Roman empire organized systems of transportation by relays of horses on the main highways, which carried not only correspondence, but passengers and baggage. These "posts" were abandoned as a result of the Germanic invasions; but were revived during the later middle ages, notably in France under Louis XI. From early in the sixteenth century a system of posts existed in England, for the convenience of the government; in the seventeenth century posts were organized in that country for the convenience of the public; and in 1710 the postal service was placed under the charge of a postmaster-general.

In America the earliest official action was taken by the General Court of Massachusetts Bay in 1639; which selected Richard Fairbanks to take charge of the delivery of letters. In

1657 the Virginia Assembly passed a regulation requiring the proprietors of each plantation to forward letters on public business to the next plantation. And in 1672 a regular monthly post was established between Boston and New York.

A more important step was taken in 1692, when the British government issued letters patent to Thomas Neale, as postmaster-general of Virginia and other parts of North America, authorizing a general service between the different colonies. In 1693 the General Assembly of Pennsylvania provided for a postmaster at Philadelphia, with deputies at other places throughout that colony. By the second decade of the eighteenth century a line of posts ran from Piscataqua in Maine to Williamsburg in Virginia.[1] In 1737 Benjamin Franklin was appointed deputy postmaster-general and in 1753 he was made postmaster-general for the colonies. In 1774 he was removed by the British government; but was continued in office under the authority of the Continental Congress. In 1776 this general service consisted of twenty-eight post-offices in the more important towns. During the Revolution the service was badly disorganized; and although both the general government and the states made some provisions for this purpose, no effective system was established until after the adoption of the constitution.

A general postal service was authorized by the first Congress under the constitution; and in September, 1789, Samuel Osgood was appointed Postmaster-General. This office was not, however, considered as a Cabinet position; and the service was classed as a branch of the Treasury. In the first year there were seventy-five local post-offices established, and mails were carried, mainly on horseback, over 1,875 miles of post roads. The total revenue was $37,000, the expenditures $32,000; and for many years the service yielded a net income to the government. Rates of post were very high, and varied with the distance carried. Even after they were reduced in 1792, the charges on a single sheet were from 6 cents for 30 miles to 25

[1] McMaster, *History of the People of the United States*, I, 40.

cents for over 450 miles. Letters containing more than three sheets were classed as packages, on which the rate was the same as for four sheets. Newspapers were especially favored from the beginning and were carried a distance of 100 miles for one cent, and for more than that distance for one and a half cents.

Step by step the service was extended; and by 1829 there were 8,004 post-offices, and 115,000 miles of postal routes, while the gross expenditures had reached the sum of $1,782,000. In that year President Jackson admitted the Postmaster-General, W. T. Barry, to his Cabinet; and at the same time the policy of using post-office appointments as rewards for campaign services was introduced,—about 500 postmasters being removed to make places for friends of the new administration. It is significant that this application of the spoils system was followed quickly by the appearance for the first time of deficits in the budget of the department, amounting to $500,000 in six years.

In 1835 Amos Kendall was appointed Postmaster-General; and under his direction there was a reorganization of administrative methods, followed by the introduction of new features which caused a radical development in the volume of postal business. The postal revenues were now turned into the Treasury, and expenditures were made dependent on congressional appropriations. For a few years the accounts showed a small surplus; but with the reduction of the rates of postage and the extension of the service deficits again appeared, and have continued to the present time. Railroads were first used for carrying the mails in 1835; and the use of this new method of transportation was extended as additional lines were built in different parts of the country. Political influences in the service continued, however; and were emphasized by an act of 1836 establishing a four years' term for the postmasters appointed by the President; while the system of political patronage was more openly established under President Lincoln, when it was announced that appointments to all minor post-offices would be made on the recommendation of members of Congress.

One of the most important factors in the development of

postal business was the adoption in 1847 of the adhesive postage stamp, which had been introduced in Great Britain some years before. Up to this time the amount of postage had to be endorsed on each letter; on much mail the postage was collected on delivery; and the postmasters in large cities kept book accounts for postage with large business firms. The adsive stamp and compulsory prepayment of postage immensely simplified the work of handling mail and greatly reduced expenses.

Other improvements followed rapidly. In 1855 the system of registering valuable letters was introduced. In 1863 the system of "free delivery" was established in cities of over 50,000 population; and in the same year the postage on letters was reduced to a uniform rate of three cents per half ounce to all parts of the United States. In 1864 the money order system was established, and the railway mail service was begun.

In recent years there has been a constant expansion of the service to outlying districts, and a steady extension of special features, such as the money order, registry and "free delivery" systems and the railway mail service. In 1883 the rate of letter postage was again reduced to two cents per ounce, and since 1895 the "free delivery" system has been rapidly introduced into rural districts.

At the present time there are 74,000 post-offices in the United States, the post routes aggregate 506,000 miles, and the annual expenditure of the department exceeds $150,000,000. Besides the postmasters, there are 20,000 clerks and 30,000 letter carriers; and the total number of persons employed in the postal service is more than in all the other civil branches of the national government combined.

The post-offices are graded into four classes, on a basis of gross receipts, while within each class the salaries of postmasters vary with the volume of business. The first class offices are those whose gross receipts exceed $40,000 a year. These are for the most part in buildings owned by the government. In the larger cities, in addition to the central post-

office there are branch offices and sub-stations in different parts of the cities for the convenience of the public. In some cases these branch offices are in different municipalities, notably in the neighborhood of Boston. On the other hand, although Brooklyn has become a part of the city of New York, it has still an independent post-office. The largest volume of postal business is naturally in New York, where the annual revenues are $13,000,000. The gross revenue of the Chicago post-office is over $9,000,000 a year; in Philadelphia and Boston, about $4,000,000 each.

Second class post-offices are those whose annual receipts are between $8,000 and $40,000. The premises for these offices are usually rented by the government. Both first and second class post-offices have besides the postmaster, an assistant postmaster, selected by the postmaster, and varying numbers of clerks and carriers. The latter are appointed from those who pass civil service examinations in all places where there is a "free delivery" service which comprises all cities with a population of over 10,000 or with postal revenues amounting to $10,000 a year.

Third class post-offices are those whose annual receipts are between $1,900 and $8,000. Postmasters of these offices and of those in the first two classes are appointed by the President and Senate; but for the most part have been selected by the members of Congress or the state managers of the party in power. The government does not directly provide premises for third class offices; but makes an allowance for rent and incidental expenses, which often has to be supplemented from the postmaster's salary.

Fourth class post-offices include those with an annual revenue of less than $1,900; and these form more than 70,000 of the whole number. Postmasters in this class are appointed by the Postmaster-General; but in the main on the recommendation of Congressmen and political managers. Fourth class postmasters receive no fixed salary, but are paid in proportion to the volume of business each year; and from their compensa-

tion must provide the necessary accommodations and apparatus. These positions are usually filled by small retail dealers, who conduct the post-office in connection with their other business.

Postmasters have charge of the care and distribution of the mails at their local post-offices. They are the agents of the government in the employment of clerks and letter carriers, over whom they have general superintendence. They arrange schedules for the collection and delivery of mails. They are held responsible to the government in their official capacity; and they are liable for loss caused by their negligent or unlawful action or inaction. Ordinarily they are not liable for the negligence or misfeasance of clerks and assistants.

Formerly only letters and unbound printed matter could be sent through the mail; but later books and small packages of merchandise have been added to the list. But within the general limits of mailable matter there are certain things excluded. Congress has prohibited from the mails any matter concerning lotteries, and all matter that is obscene, lewd or lascivious; and has authorized the Postmaster-General to prevent the delivery of mail matter to persons engaged in using the postal service for conducting a lottery or a scheme to obtain money by false and fraudulent pretenses. Such restrictions do not conflict with the constitutional guarantees in favor of the freedom of the press or against depriving a person of property without due process of law.[1]

There are four classes of mail, each with different rates of postage. The first class consists of letters which are carried anywhere within the jurisdiction of the United States, for two cents per ounce, and postal cards, costing one cent each. Second class mail consists of newspapers and magazines, on which the charge is one cent a pound when sent by the publishers.[2]

[1] 96 U. S. 727; 143 U. S. 110.

[2] This rate does not apply to delivery by carrier in the city of publication. With the same exception, second class publications are taken free for delivery to actual subscribers within the county of publication.

and one cent per four ounces when sent by others. Third class mail consists of all other printed matter, on which the rate is one cent per two ounces. Fourth class includes packages of merchandise weighing not more than four pounds, which are carried at the rate of one cent an ounce.

To all foreign countries within the International Postal Union the rate of postage on letters is five cents per half ounce, and on newspapers one cent for two ounces. By special arrangements, mail to and from Canada and Mexico is carried at domestic rates.

Rates on third and especially on fourth class matter are higher in the United States than in most foreign countries; and these two classes form a comparatively small part of the postal business. First class mail constitutes the greater part of the number of pieces carried and produces nearly four-fifths of the total postal revenue. Second class mail forms more than half (55 per cent.) of the total weight of mail carried, and costs the government for transportation alone more than $30,000,000 a year; but the total revenue is less than $5,000,000 a year. The loss to the government on this class of mail has been much increased by devices of publishers and business houses in issuing printed books and advertising pamphlets in serial form; and while some of the worst abuses have been remedied recently, the provisions of the law permit many publications to secure second class rates which have no special claim on the bounty of the government.

Another factor which explains the deficit in the postal budgets is the large amount of mail carried on behalf of the national government. Not only do the administrative and judicial officers pay no postage on official correspondence, but the members of Congress through their franking privilege have the same advantage. About one-eighth of the total weight of mail is government mail.

Transportation forms one of the largest items of postal expenses, amounting to $60,000,000 a year. Mail is carried by all sorts of public conveyances. Nearly every mile of railroad

in the country is a post route. There are 41,000 miles of steamer routes for points not reached by railroads, besides the transoceanic routes to foreign countries. There are also 250,000 miles of "star routes," where the mails are carried by wagons and horsemen to points off the main lines of transportation. All of this service is done by private individuals and corporations under contract with the government. Speed is an important element in securing these contracts; and there is often active competition between different railroads in establishing fast trains to secure a large share of the business. On the other hand, it is claimed that the payments made for transportation (the rates of which have not been altered since 1873) are excessive and much higher than the railroads obtain for similar service from the express companies.

Closely connected with the transportation of the mails is the railway mail service. On most of the railroad lines postal cars are attached to express trains, which not only carry pouches of mail, but have also a staff of clerks who sort and distribute the mail *en route,* thus reducing the work of the distributing centers and increasing the rapidity of the postal service. Nearly 9,000 railway mail clerks are employed by the government in this branch of the service.

Delivery of mail to the addressee was formerly made only at the post-office. To facilitate this work letter boxes were set up in the office and rented to those receiving mail. Later the government developed an elaborate system of local delivery by carriers to the house or business address. This system, miscalled "free delivery," is now provided to about one-half of the population of continental United States. The service is established in cities aggregating a population of 30,000,000; and the more recently organized rural delivery is already (October, 1904) in operation on some 27,000 routes, reaching a population of approximately 12,000,000. The sender of a letter loses control over it, as soon as it is placed in the post-office; and the Post-Office department becomes at once the agent of the addressee to forward and deliver it to him.

Several special services are now added to the earlier functions of the post-office. By affixing a "special delivery stamp," costing an additional fee of ten cents, a letter or package will be delivered to the addressee immediately after its arrival at the terminal post-office. By the registry system, on payment of a fee of eight cents, an exact record is kept of the movement of valuable or important letters, a receipt for their delivery is returned to the sender, and meanwhile they are insured against loss or destruction to the value of $25 each. Through the money order system, the government does a vast amount of banking business, in the transfer and exchange of small sums of money for trifling fees. Money orders are now issued and paid at 30,000 post-offices; and 46,000,000 orders, aggregating $350,000,000, are handled in a year.[1]

In other countries several additional services are performed by the post-office, which as yet have not been adopted by the United States government. While in this country packages weighing over four pounds will not be taken,—except in the case of single books or by paying letter rates,—in several foreign countries parcels up to ten or fourteen pounds are taken, at much lower rates than are charged by express companies in the United States. In Great Britain and France the post-office does an enormous saving bank business, which reaches

[1] DEVELOPMENT OF THE POSTAL SERVICE

Year ending June 30	Number of Post Offices	Miles of Post Routes	Total Revenue	Expenditures		
				Total	Transportation	
					Domestic Mail	Foreign Mail
1800.....	903	20,817	$ 280,804	$ 213,994	$ 128,644	
1810.....	2,300	36,406	551,684	495,969	327,966	
1820.....	4,500	72,492	1,111,927	1,160,926	782,425	
1830.....	8,450	115,176	1,850,583	1,932,708	1,274,009	
1840.....	13,468	155,739	4,543,522	4,718,236	3,296,876	
1850.....	18,417	178,672	5,499,985	5,212,953	2,965,786	
1860.....	28,498	240,594	8,518,067	19,170,610	8,808,710	
1870.....	28,492	231,232	19,772,221	23,998,837	10,884,653	
1880.....	42,989	343,888	33,315,479	36,542,804	20,857,802	199,809
1890.....	62,401	427,990	60,882,097	65,930,717	34,116,243	563,631
1900.....	76,688	500,990	102,354,579	107,740,267	54,135,930	2,100,266
1904.....	71,131	496,818	143,582,624	152,362,116	67,931,429	2,516,053

every nook and corner of these countries. And in most European countries the telegraph system is operated by the government as a branch of the postal service.

CENTRAL ADMINISTRATION

General direction of the postal service is in charge of the Postmaster-General. He establishes and discontinues post-offices; issues postal regulations; appoints all officers and employees in the department offices at Washington, except the four assistant postmasters-general; appoints all postmasters whose compensation does not exceed $1,000 a year; makes postal treaties with foreign governments, with the advice and consent of the President; and awards and executes contracts.

There are four assistant postmasters-general, appointed by the President and Senate. All of these are considered as political positions; and there is thus no permanent official in any of the most important offices in the department. Each assistant postmaster-general has supervision over a number of the divisions into which the departmental work is organized; and his position thus corresponds in some degree to that of a commissioner at the head of one of the principal bureaus in the other departments. But the grouping of the divisions in the Post-office department is not well systemized, and only the second assistant postmaster-general is in charge of a group of divisions so related in their operations as to form a distinct branch of the postal service. Each of the others has charge of a miscellaneous series of divisions having no close functional relations with each other, while closely related divisions are separated and placed in different groups. Each assistant postmaster-general is authorized to sign certain contracts in place of the head of the department.

The first assistant postmaster-general has charge of five divisions: salaries and allowances, dead letters, correspondence, supplies (mainly stationery), and money orders. The second assistant postmaster-general has charge of the general subject of mail transportation, which is subdivided among six divis-

ions: railway adjustment, contracts for star and steamboat routes, inspection, mail equipment, railway mail service, and foreign mail service. The third assistant postmaster-general has supervision over contracts for postage stamps and official envelopes, and general direction over the following six divisions: postal finance, postage stamp supplies, mail classification, registered mails, redemption of stamped paper, and files, mails and records. The fourth assistant postmaster-general has charge of five divisions: appointments, bonds and commissions, mail depredations, city delivery and rural delivery.

Some readjustments of this arrangement almost suggest themselves. One of the principal bureaus might deal with all the divisions affecting the personnel of the local offices,—such as appointments, bonds and commissions, and salaries. The divisions of stationery supplies and stamp supplies should be in the same bureau. And special services such as money orders and registered mail could with advantage be placed under the same general superintendence.

Divisions in the Post-Office department are in charge of officers usually with the title of superintendent or chief; but the head of the railway mail service has the more dignified rank of general superintendent. Each of these has a staff of clerks in the department at Washington; while some of them have a force of traveling inspectors and special representatives in the local post-offices. Traveling inspectors are of three kinds: those who examine local offices and their accounts, and the railway mail service; those who investigate mail depredations and losses and criminal violations of the postal laws; and those who investigate conditions for the establishment of rural delivery routes.

One serious defect in the organization of the postal administration is the absence of any officials of general authority over large territorial districts, intermediate between the local offices and the central department at Washington. None of the great railroad systems attempts to supervise all their station agents and local representatives directly from one central office; but

makes use of territorial divisions, in each of which there is a superintendent and division representative of the main branches of the service. The vast and complex postal service covering the whole country would certainly be improved through a similar class of permanent officials acting as general superintendents over territorial districts, and from whom there might be selected a general manager for the whole system.

CHAPTER XIII

The Department of the Interior—I

Public Lands

References.—*American and English Encyclopedia of Law*, 26:197.—*Decisions of the Department of the Interior and of the Public Land Office.*—Thomas Donaldson: The Public Domain (House Executive Documents 47, 46th Congress, 3d session).—W. H. Lester: Land Laws, Regulations and Decisions of the United States.—D. H. Talbot: Land Laws of the United States.—H. N. Copp: Public Land Laws.—D. S. Sickles: United States Mining Laws and Decisions.—S. Sato: History of the Land Question (Johns Hopkins University Studies, IV).—A. B. Hart: Practical Essays, No. 10.—B. A. Hinsdale: Old Northwest, ch. 14.—Winsor: Narrative and Critical History, 7:533.—*Atlantic Monthly*, 43:325.—*Forum*, 29:347.—*North American Review*, 133:204; 140:280.

Indian Affairs

Charles J. Kappler, editor: Indian Affairs, Laws and Treaties, 1778-1902 (Senate Document 452, 57th Congress, 1st session)—Cyril Thomas: The Indians of North America (1904).—Alice C. Fletcher: Report on Indian Education.—F. A. Walker: The Indian Question.—George W. Mannypenny: Our Indian Wards.—George E. Ellis: The Red Man and the White Man.—Mrs. H. H. Jackson: A Century of Dishonor.—*American Law Review*, 15:21; 20:183.—*Atlantic Monthly*, 68:549, 676; 83:255; 84:280.—*North American Review*, 128:413; 167:719.—*Forum*, 10:708; 28:737.—*Annals Amer. Acad. Soc. and Pol. Sci.*, 2:813.—*Review of Reviews*, 5:551; 23:451.—*Federal Reporter*, 14:541.

Unlike the other departments in the national administration, the title of the department of the Interior does not indicate with any clearness the character of the work with which it has to deal. Indeed, the matters assigned to it are so miscellaneous and heterogeneous that it would probably be impossible to find any simple title that would serve to describe them. It has already been noted, too, in speaking of the Secretary of

the Interior as a member of the Cabinet, that this department in the United States deals in large measure with different subjects than the department of the Interior in the countries of continental Europe. But the very complex variety of interests grouped together serve to make the department one of the most important from the administrative point of view; and its staff employed at Washington ranks second only to that of the department of the Treasury.

As originally constituted, by act of March 3, 1849, the department of the Interior included the patent office, transferred from the department of State; the general land office, from the department of the Treasury; the Indian service and the pension bureau, from the department of War; the accounts of marshals and other officers of the United States courts; and some minor matters. Some of these have since been transferred to other departments: the supervision over the accounts of the officers of the courts and over the penitentiaries, to the department of Justice; and the oversight of public buildings to the department of the Treasury. But what the department of the Interior has lost in this way has been more than made up by the addition of other functions: the geological survey, the bureau of education, supervision over the organized territories, oversight of railroad land grants, the management of national parks and the administration of local institutions in the District of Columbia.

Over all of these matters, and the officers specially charged with duties in each of them, the Secretary of the Interior has general supervision. More specifically he acts as an appellate authority, from the various subordinate commissioners; and renders decisions on questions of patent law, pension law, land law and the construction of Indian treaties, which form an important part of the law governing these various subjects. In the exercise of this quasi-judicial appellate function, he can call upon the assistant attorney-general for the department[1] and his corps of attorneys for the examination of documents

[1] See page 172.

and precedents and for legal advice; but the responsible decision must be made by the secretary himself.

In the immediate office of the Secretary of the Interior, as distinguished from the various bureaus of the department, there is a first assistant secretary of the department, an assistant secretary, and a large staff of clerks organized in the following divisions: appointment, finance, lands and railroads, Indian affairs, Indian Territory, patents and miscellaneous, board of pension appeals, stationery and printing, public documents, custodian, library and superintendent's branch.

PUBLIC LANDS

Perhaps the most important of the bureaus in the department of the Interior is the general land office, which has charge of the administration of the public domain, or the lands owned by the United States. The office was created in 1812 as a bureau in the department of the Treasury, which had previously had charge of the public lands; and in 1849 it was transferred to the department of the Interior.

The acquirement of the public lands has been closely related to the territorial expansion of the United States; but the two movements have not been identical, and it is important to distinguish clearly between the extension of governmental jurisdiction and the acquirement of ownership in the land. In the colonial period both ownership and jurisdiction were held to be vested in the Crown of England, which made grants of both classes of power to the colonizing companies and private individuals. Within the limits of the colonies there remained tracts of Crown lands, title to which passed to the states at the time of the Revolution. A number of the States also had conflicting claims both to jurisdiction and ownership over the area west of the Alleghany mountains; and the national domain was begun with the cession of a large part of these claims to the Congress of the Confederation in 1780. Over all of the territory west of the present boundaries of the original thirteen states all claims of jurisdiction were surrendered, and from

this territory new states were later created; but within these limits some of the states retained the property title to part of the lands, although a large proportion was transferred to the United States. To regulate the domain thus acquired the Congress in 1785 passed an ordinance providing for the survey and sale of the lands. In 1789 the new national government came into possession of these lands.

By the Louisiana purchase in 1803 the United States not only acquired jurisdiction over the territory from the Mississippi river to the Rocky Mountains; but also came into possession of the property title to 98 per cent. of the area. The addition of the Oregon country as a result of exploration about the same time added to the public domain as well as the territorial jurisdiction of the United States, although the limits of these acquisitions were not determined until 1846. The purchase of Florida in 1819 included the property title to most of the land. On the other hand, the annexation of Texas in 1845 did not of itself add an acre to the public domain of the United States. But the territory annexed as the result of the Mexican War was for the most part also an addition to the public domain, and this was further increased by the cession from Texas of its claims to lands in New Mexico and neighboring states, and by the Gadsden purchase from Mexico. The purchase of Alaska in 1867 involved the property title to practically all of the land, as well as the rights of jurisdiction. The recent annexations of the Hawaiian Islands and Porto Rico have not involved any important additions to the public lands. In the Philippine Islands are large tracts of public land, acquired partly by cession from Spain and partly by purchase from the friars; but these are managed by the Philippine government, and do not come within the jurisdiction of the general land office.

Excluding the Philippine Islands, the United States government has at one time or another had the ownership in fee simple of 2,925,000 square miles of land, out of a total of 3,500,000 square miles within the limits of the country.

Of the public lands thus acquired a large part has already been transferred to other owners by sale and grant under a number of different statutes. Generally before public land is open for sale it must be surveyed, according to the rectangular system adopted in the ordinance of 1785. Under this plan the lands are divided by north and south lines along the true meridian, and by others running east and west so as to form townships as nearly as possible six miles square. Owing to the convergence of the north and south meridians the area varies a little from this. Townships are divided into sections, one mile square or 640 acres, as nearly as may be; and the sections in each township are numbered consecutively, from one to thirty-six. Sections may be further subdivided into half sections of 320 acres, and quarter sections of 160 acres.

For this work, surveying districts are established, each district comprising a state or territory. There are now seventeen[1] of these districts, in each of which there is a surveyor-general and a force of deputy surveyors. Each surveyor-general appoints his deputies, formulates and enforces rules for their direction, and may remove them for negligence or misconduct in office. Under the provisions of the statutes and the orders of the general land office, the surveyors survey and measure base and meridian lines and correction parallels, and mark the necessary points by monuments. They must also survey private land claims confirmed by Congress so far as may be necessary to complete the public survey. Plats of surveys are sent to the United States local land offices within the surveying district; and on these are recorded the grants and sales by the government. When the surveys and records of a district are completed, all the survey records, including maps, field notes and other papers, are delivered to the secretary of the state or territory wherein made, and thereupon the United States surveying district and its officers are discontinued.

[1] Alaska, Arizona, California, Colorado, Florida, Idaho, Louisiana, Minnesota, Montana, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington and Wyoming.

From the beginning the national government adopted the policy of disposing of the public lands to private holders. Grants were made to the soldiers of the Revolutionary army, and afterwards to soldiers in the Indian wars, the War of 1812 and the Mexican War. Sales of land at first were mainly in large lots to colonizing companies; but in 1796, in order to encourage direct purchase by the settlers, the government instituted a credit system. This, however, led to settlers undertaking to purchase more land than they could pay for; and in 1820 the credit system was abolished, the government now offering to sell land for cash at a minimum price of $1.25 an acre in lots as small as forty acres. Large speculative purchases of land with unsecured bank currency brought on the financial panic of 1837.

A great deal of land has been granted to the states for different purposes. Beginning with Ohio in 1802, each state admitted from the public land territory was given one section in each township for educational purposes; states admitted since 1850 have received two sections in each township for such objects; and by an act of 1862, 10,000,000 acres were given to the states as an endowment for agricultural colleges. From 1828 to 1846 the enormous amount of 168,000,000 acres were granted to various states for internal improvements, at first for canals and later for railroads. In 1849 swamp and overflowed lands were granted to the states in which they lie.

In 1841 the preëmption act was passed for the encouragement of land purchases by actual settlers. Under this act the head of a family could secure 160 acres of land by living on it for six months and paying $200. From this time until repeal of the law in 1891 most of the land sales were made under this act.

A further step was taken to encourage settlement by the Homestead Act of 1863, which offered 160 acres of government land to any head of a family after living on it for five years, and paying almost nominal fees. By the Timber Culture act of 1873, tracts of from 40 to 160 acres were given for planting

and cultivating trees on a small area for five years; but abuses led to the repeal of this act in 1891.

At the time of the discovery of gold in California, there was no special law governing mining lands. Under these conditions the miners themselves developed a system of customary regulations, which were scrupulously observed, and formed practically the only mining land law during the whole period of the development in mining the precious metals from 1849 to 1866. When Congress finally took action it not only recognized past transactions under the system of "camp legislation," but the statute of 1872 provided that purchases should continue to be "according to the local customs or rules of miners in the several mining districts, so far as the same are applicable, and not inconsistent with the laws of the United States."

Since 1860 the national government has directly granted large tracts of land to private corporations as subsidies for the building of transcontinental railroads, such as the Union Pacific, Central Pacific and Northern Pacific.

Other statutes made special provisions in regard to the disposal of desert lands, Indian lands and land for town sites.

Under these various methods more than a million square miles of the public domain have been disposed of to private individuals and corporations. The gross revenue received from the sale of lands has been about $350,000,000. The expenses for land cessions, extinguishing the occupancy titles of the Indians, surveys and administration has been about $360,000,000. If the management of the lands is considered purely as a financial undertaking the net returns cannot be said to show a successful result, and there would seem to be no doubt that there has been a good deal of unnecessary waste in the granting of lands before their value was known. On the other hand, the policy of the government has undoubtedly promoted the rapid settlement and development of the country; and as an indirect result of this the government may have received more than if the administration of the public lands had been

conducted with a view to the largest direct financial returns.

About 1,600,000 square miles of public lands are still owned by the national government; and it is with the management of this that we are here specially concerned. Nearly one-third of this is in Alaska; and the remainder is mostly in the states and territories west of the 104th meridian. Most of it is mountain or desert land unfit for agriculture without the aid of extensive irrigation works. About 250,000 square miles are set aside for Indian reservations, national parks and forest reservations. From time to time an Indian reservation with good farming land is thrown open; and there is a rush of settlers and purchasers eager to take possession.

Some of the most important provisions of the statutes now in force governing the disposal of the public lands may be noted. Under the homestead act any citizen of the United States, or any person who has declared his intention of becoming such, who is the head of a family, or has attained his majority, or has served in the army or navy in time of war, and is not already the proprietor of 160 acres of land, is entitled to enter a quarter section (160 acres) or less amount of unappropriated public land, and may acquire title thereto by establishing and maintaining residence thereon and improving and cultivating the land for a period of five years. Fees amounting to from $20 to $40 must be paid; and in the case of lands formerly Indian reservations an additional charge of from 50 cents to $5 an acre is now made.

Arid lands will be sold to resident citizens of the state or territory, in tracts of not over 320 acres for $1.25 an acre, and an expenditure of at least $1 an acre each year for three years in irrigation and improvement works, and the cultivation of one-eighth of the land. Lands chiefly valuable for timber and stone will be sold in tracts of not more than 160 acres at $2.50 an acre. Mining claims or mineral lands are sold in small areas to those expending at least $100 a year on labor and $500 on permanent improvements at $5 an acre or fraction thereof

for lode claims, and $2.50 an acre for placer claims. Lots of land on town sites are sold at a minimum of $10 a lot.

In the case of homesteads, and lands and mining claims there must be a preliminary entry at the government land office, and the occupancy and improvement of the land for some time before a patent will be issued and a complete title passed.

Local land offices are established in all of the states where there is any considerable amount of public land. There are now 117 of these. At each land office there is a register and receiver, with such clerical assistance as is necessary. These offices must examine the papers submitted by those making land entries; and when satisfied as to the existence of the necessary facts, and the regularity and sufficiency of the proofs, the register issues his certificate to that effect and the receiver gives what is known as a "final receipt," and upon these two papers the patent to the land is finally issued.

Besides the officials at these local land offices there is what is known as the miscellaneous land service, consisting of agents of the general land office assigned to special duties in different parts of the country. These include examiners of surveys, special detective agents, the custodians of abandoned military reservations, and the rangers and supervisors in the forestry service. The last named now has the care of fifty-four forest reserves in the western states and territories, aggregating over 60,000,000 acres. The largest of these are: the Alexander archipelago reserve in Alaska, the Washington reserve, the Cascade Range reserve in Oregon, the Sierra reserve in California, the Teton reserve in Wyoming, and the Black Mesa reserve in Arizona.[1]

General administration of the public lands and the land agents of the United States is vested in the commissioner of the land office. He is required to perform under the direction of the Secretary of the Interior all executive duties appertaining to the survey and sale of the public lands of the United States,

[1] It is proposed to transfer this forestry service to the bureau of forestry in the department of Agriculture.

or in anywise respecting such lands, and also such as relate to private claims of land.[1] He prescribes the rules governing the local registers and receivers; and has supervisory power over them, including the right to review their decisions as to the matter of settlement and improvement and in controversies between different settlers as to the right of preëmption.[2] Appeals from the local land officers to the commissioner are frequently made; and further appeals are allowed to the Secretary of the Interior. The decisions on these appeals, both by the commissioner and secretary, are published from time to time in a series of volumes now numbering more than thirty. These decisions form a considerable and important part of the law governing the administration of the public lands; and digests have been prepared to aid in referring to them.

The commissioner of the land office also acts in the capacity of an auditor of the treasury. All financial returns relating to the public lands are made to him; he audits the accounts; certifies the balances and transmits the accounts to the treasury for examination and decision; and makes settlements with the local officers.

In the general land office at Washington there is also an assistant commissioner; and the bureau staff is organized in thirteen divisions, as follows: Chief clerk; recorder; public lands; public surveys; railroads; private, Indian, school and arid lands; contests; swamp lands; drafting; accounts; mineral claims; special service; and forestry.

INDIAN AFFAIRS

Most, but not quite all, of the governmental relations with the Indians in the United States are under the control of the national authorities, acting mainly through the Indian bureau under the commissioner of Indian affairs in the department of the Interior.

In the colonial period it was early recognized that the Indian

[1] *Revised Statutes*, § 453; cf. 142 U. S. 161, 177; 158 U. S. 155, 167.
[2] 1 Black (U. S.) 316; 157 U. S. 372; *Revised Statutes*, § 2273.

tribes had a possessory right in the soil, which must be extinguished before the legal title of the Crown could be put into effect. Accordingly treaties were made for securing the consent of the Indians to one tract after another; while from time to time military operations, both offensive and defensive, had to be carried on against the Indians. In New York before the adoption of the national constitution an executive department had been established to conduct affairs with the powerful Iroquois league of Indians.

Under the constitution of 1787 Congress has power to regulate commerce with the Indian tribes; but this grant does not serve to explain all the authority which the national government has come to exercise over the Indians. Of at least equal importance are its treaty powers, its military powers and its ownership of the vast public domain, through which it came to deal with conflicts between the Indians and white settlers, and to undertake the purchase or extinguishment of the Indian right of occupancy in the land.

Down to the year 1871 the relations between the Indians and the national government were regulated by treaties made with the several tribes. The tribes were thus considered as separate political communities, not entirely subject to the jurisdiction of the United States; but they were by no means considered or treated as independent nations. The legal theory of their status was not clearly expressed until 1831, when Chief Justice Marshall, in the case of Cherokee Nation *v.* Georgia,[1] discussed

[1] 5 Peters, 1. The Cherokees were said to be a state, "a distinct political society, separated from the others, capable of managing its own affairs and governing itself. . . . They have been uniformly treated as a state from the settlement of our country. The numerous treaties made with them by the United States recognize them as a people capable of maintaining the relations of peace and war, of being responsible in their political character for any violation of their engagements, or for any aggression committed on the citizens of the United States by any individual of their community. Laws have been enacted in the spirit of these treaties. The acts of our government plainly recognize the Cherokee nation as a state, and the courts are bound by these acts."

But, "do the Cherokees constitute a foreign state in the sense of the

it at some length, ending by calling them "domestic, dependent nations."

For nearly fifty years the management of Indian affairs was entirely in the hands of the military authorities. The army put down uprisings, which occasionally rose to the dignity of a war. Treaties established boundary lines running roughly north and south between the region open to white settlers and the Indian country, and these lines were steadily moved westward. In Monroe's administration it was decided to move all of the Indians west of the Mississippi river; but this policy was not fully executed in the south until after 1830.

President Jackson introduced some important changes in Indian policy. The tribes from Georgia and Alabama were moved beyond the Mississippi; and as the tide of white settlement was pushing forward across that stream, Indian reservations with ring boundaries were established in place of the north and south dividing line. The execution of these plans brought on two serious Indian wars: the Black Hawk in 1831, and the Seminole from 1835 to 1842. About the same time (in 1832) the office of commissioner of Indian affairs was estab-

constitution? . . . . In the general, nations not owing a common allegiance are foreign to each other. The term foreign nation is, with strict propriety, applicable by either to the other. But the relation of the Indians to the United States is marked by peculiar and cardinal distinctions which exist nowhere else."

"The Indian territory is admitted to be part of the United States. . . . . They acknowledge themselves in their treaties to be under the protection of the United States; they admit that the United States shall have the sole and exclusive right of regulating the trade with them. . . . Though the Indians are acknowledged to have an unquestionable, and heretofore unquestioned right, to the lands they occupy, until that right shall be extinguished by a voluntary cession to our government; yet it may well be doubted whether those tribes which reside within the acknowledged boundaries of the United States, can with strict accuracy be denominated foreign nations. They may, more correctly, perhaps, be denominated domestic dependent nations. They occupy a territory to which we assert a title independent of their will, which must take effect in point of possession, when their possession ceases. Meanwhile they are in a state of pupilage. Their relation to the United States resembles that of a ward to his guardian."

lished, to have charge of civil relations with the Indians; but the new commissioner was at first attached to the department of War, and army officers continued to act as Indian agents. On the creation of the department of the Interior in 1849, the bureau of Indian affairs was transferred to it, and a more distinctly civilian administration established. The main object of the government's policy, however, remained as before: to secure the surrender of the Indian occupancy of the land, so as to make way for white settlers; and to confine the Indians in reservations of constantly narrowing limits, within which the tribal conditions remained undisturbed.

In 1871, there began a most important change in the attitude of the government towards the Indians. A statute of that year provides that "No Indian nation or tribe within the territory of the United States shall be acknowledged or recognized as an independent nation, or power with whom the United States may contract by treaty." The logical outcome of this measure was the annihilation of tribal autonomy; and it marks the first step in that direction. But the practical results at first were but slight. The obligation of previous treaties was maintained; and "agreements" with the separate tribes have been made, differing from treaties only in being concluded by Congress, the legislative body, instead of by the President and Senate. This was indeed the prime object of the provision, which was forced upon the Senate by the House of Representatives in an appropriation bill.

In 1885 another statute followed up the logic of the act of 1871 for a step or two. This claimed for the United States full jurisdiction over individual Indians on the reservations, by providing that for the seven leading crimes such Indians should be tried in United States or territorial courts. Before this, the United States courts had dealt only with crimes on reservations in which white men were involved, excluding crimes committed by Indians against Indians as a matter to be settled within the tribe; while the states were also held to have no jurisdiction over Indians in their tribal relations. It had

indeed been suggested that not even the national government could assume jurisdiction over the relations of the Indians with each other; but when the act of 1885 was brought before the Supreme Court it was held to be clearly constitutional.[1] Further progress in establishing the new policy of dealing with the Indians not as tribes but as individuals was made by an act of 1887, providing for the allotment of Indian lands in severalty to the various members of a tribe. A system of Indian schools has also been developed for the education of Indian children along the lines of modern civilization.

It is now clearly established that the national government has supreme authority in all matters concerning Indian affairs.[2] Where Indian reservations are expressly excluded from the limits or jurisdiction of a state or territory (as in the case with larger reservations in the most recently created states), the latter has no jurisdiction therein, and the national government has exclusive control.[3] So, too, for purposes relating to treaties or agreements between the United States and the Indians, the government has exclusive jurisdiction. But in the absence of special provisions an Indian reservation is part of the state or territory within which it lies, and subject to its jurisdiction except in reference to the government and protection of the Indians.[4]

National control over the Indians is exercised partly by the United States courts, and partly through the bureau of Indian affairs. A discussion of the jurisdiction of the courts does not, however, come within the scope of this work; and attention will here be given to the administration of the laws in reference to the lands, commerce, protection and education of the Indians. This will include the reservation system, Indian schools, non-

[1] U. S. *v.* Kagama, 118 U. S. 377.

[2] Worcester *v.* Georgia, 6 Peters, 515, 561; 3 Wallace, 407; 5 Wallace, 737, 761.

[3] Harkness *v.* Hyde, 98 U. S. 476.

[4] 102 U. S. 145; 104 U. S. 621; 116 U. S. 28; 169 U. S. 264; 170 U. S. 588.

tribal Indians, and the organization of the central bureau in Washington.

There are now about 160 Indian reservations, mostly west of the Mississippi, with a total area of about 75,000,000 acres, and a population of about 270,000 Indians. Outside of "Indian Territory" the Indians on these reservations maintain their tribal organization; but a system of control is also maintained by the Indian agents, representing the national government. Before 1849 these agents were usually army officers, and some military agents are still appointed; but for the most part they are now civilians. They are appointed by the President and Senate for a term of four years; and political appointments have often led to mismanagement and corruption. The duties of the Indian agents are to manage and superintend intercourse with the Indians within his agency. He has charge of the distribution of rations, and supervises the Indian traders. Practically he acts as governor, marshal and judge. At each agency there is a force of clerks and often a doctor and an experienced farmer. Schools are maintained at the agency and at other places in large reservations. Civilized Indians are given positions in the agency service; and a company of Indian police is organized at each of the important reservations. The sale of intoxicating liquors is forbidden on reservations or to reservation Indians.

Special arrangements apply to the "five civilized tribes"[1] in Indian territory. By an old treaty they were given the title in fee simple of their lands; and only recently have agreements been made to substitute allotments in severalty for communal holdings. There are also organized Indian governments, with a legislature, courts, and executive officials. A good deal of land is cultivated by the Indians; while about 300,000 white people occupy land in the territory under leases from the Indians. A special Indian inspector has general supervision over Indian affairs within the territory, except questions of citizen-

[1] The Cherokees, Chickasaws, Choctaws, Creeks and Seminoles.

ship, allotment and some other matters in charge of the commission to the five civilized tribes.

Under the land-in-severalty acts individual allotments of land have now been made to over 70,000 Indians, aggregating about 9,000,000 acres. To protect these Indians it is provided that these allotments cannot be alienated within a stated period unless with the consent of the President or of the Secretary of the Interior. Indians who accept such allotments, or who leave their tribe and adopt the habits of civilized people become citizens of the United States and of the State; and are entitled to all the rights and privileges of citizens.[1]

Besides the reservation schools, the government maintains twenty-five Indian schools in other parts of the country, the most important being those at Lawrence, Kans., and Carlisle, Pa. At these schools Indian children are trained in reading, writing and arithmetic, agricultural pursuits and various mechanical and industrial trades. A superintendent has charge of the school service; and each school has a principal with a staff of teachers for the various branches of the work.

General direction over Indian affairs and the force of Indian agents, teachers and inspectors is vested in the commissioner for Indian affairs, under the supervision of the Secretary of the Interior. The commissioner has the sole power to license and regulate traders with the Indian tribes. He examines the accounts and disbursements; and reports to Congress on the finances and administrative work of the Indian service. The total expenditures of the Indian service is about $10,000,000 a year, about $6,000,000 coming from funds belonging to the Indians, such as payments in accordance with treaty stipulations, and interest on trust funds of moneys paid for Indian lands.

There is also a board of Indian commissioners, composed of

[1] Before the statute conferring citizenship was enacted, the Supreme Court of the United States held (Elk *v.* Wilkins, 112 U. S. 94) that an Indian did not become a citizen under the fourteenth amendment by leaving his tribe.

nine members appointed by the President, who serve without compensation other than their traveling expenses. This board visits the reservations, and has the right to inspect all goods and provisions purchased for the Indians, and to examine the expenditures from appropriations.

CHAPTER XIV

The Department of the Interor—II

Pension Bureau

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PENSION BUREAU

Pensions and bounties as rewards for military and other public services have existed in some form almost since the

beginning of history. In the past such rewards, especially in the form of feudal land grants, were of very large importance. In modern times, however, since government expenditures have been placed on a strict money basis, pension payments are a comparatively unimportant item for other countries. But in the United States during the last twenty years these payments have constituted the largest item in the expenditures of the national government.

Pensions in America began during the colonial period, when they were given to disabled soldiers. At the outbreak of the Revolutionary War the Continental Congress promised half pay for life to disabled officers and men. Later half pay for life was voted to all officers who served through the war; but this was afterwards commuted to a cash bonus of five years' pay. Money pensions and land grants were also voted by some of the states.

In 1789 the national government assumed the payment of military pension to soldiers disabled in the Revolutionary War. Later legislation increased the expenditures, notably an act of 1818 granting pensions to all dependent Revolutionary soldiers, and acts of 1833 and 1836 granting service pensions and pensions to the widows of Revolutionary soldiers.

Land grants were given to soldiers in the Indian wars, the War of 1812 and the Mexican War; and money pensions to disabled soldiers. But up to the Civil War the payments for pensions seldom exceeded two million dollars a year; and the total expenditures were but little more than eighty million dollars.

In 1862 a new invalid pension law was enacted, increasing the allowances; and this with the results of the Civil War soon swelled pension expenditures to over $20,000,000 a year. An act of 1879 providing for the payment of back pensions to new claimants brought the payments up to $87,000,000 in 1889. A dependent pension act was passed in 1890, twenty-five years after the close of the war and ten years earlier than the similar act for revolutionary soldiers. Service pensions have also

been provided for soldiers in the war of 1812 (1871), the Mexican War (1887) and the Indian wars (1892). In addition several thousand special pension acts have been passed, granting pensions to individuals not entitled to pensions under the general laws. As a result pension expenditures rose to a maximum of $147,000,000 in 1898; since when they have slightly declined to $138,000,000 in 1903.

Already in 1890 the annual payments for pensions by the national government were more than double the expenditures for all other public charity in the United States. The aggregate expenditures for pensions since 1860 has been more than $3,000,000,000, a larger sum than the debt incurred for the war.

Administration of the pension laws was first entrusted to the department of War for army pensions, and to the department of the Navy for navy pensions. In 1833 a special pension bureau under a commissioner of pensions was established in the department of War; and in 1840 this bureau was given charge of navy as well as army pensions. In 1849, on the creation of the department of the Interior, the pension bureau was transferred to this department, and placed under the general supervision of the Secretary of the Interior.

The commissioner of pensions supervises the examination and adjudication of claims for bounty lands or pensions, under the acts of Congress. He establishes regulations governing the officers of the bureau in the application of the pension laws. The pension bureau has full charge of ascertaining, determining and certifying who is entitled to a pension, and has power to review its own decisions. The certificate of the commissioner is *prima facie* evidence of title to a pension; but as he is not a judicial officer, if he grants a pension on improper or fraudulent evidence, the government may recover the money paid on such a pension.[1] The decision of the commissioner against granting a pension can be appealed only to the Secre-

[1] 4 Court of Claims, 218; 10 Fed. Rep. 547; 25 Fed. Rep. 470; 44 Fed. Rep. 475.

tary of the Interior.[1] In the pension bureau there are two deputy commissioners, a staff of examiners and medical examiners, and the usual clerical force.

Applications for pensions must be made, supported by affidavits or other proof. False or fraudulent representations as to a material fact will invalidate the pension, and render the party liable to criminal penalties. Statements as to military service can be verified from the official records. Claimants for invalid pensions are subject to medical examinations. A special class of pension attorneys has developed, to present and urge pension claims; and these are subject to the regulations of the bureau and liable to be excluded from practice before the department for violation of its rules. The legal fee of such attorneys is fixed at ten dollars, except in case of a special contract, when a payment up to twenty-five dollars will be allowed.

For the payment of pensions there are eighteen local agencies in different parts of the country: at Augusta, Me., Concord, N. H., Boston, New York, Philadelphia, Washington, Buffalo, Pittsburgh, Columbus, O., Indianapolis, Detroit, Chicago, Milwaukee, Louisville, Knoxville, Des Moines, Topeka and San Francisco. At each of these there is a pension agent, appointed by the President and Senate, with a staff of clerks. Pension certificates when issued are sent from the pension bureau in Washington to the local pension agents, who prepare and mail quarterly vouchers to the pensioners; and, on the return of the vouchers properly executed, the agents send checks for the amounts due.

PATENT OFFICE

Patents have developed from royal grants of monopolies or exclusive privilege to a particular trade made by the English Crown during the latter part of the medieval period. Opposition to abuses in these monopoly grants arose towards the end of the reign of Elizabeth; and the law courts decided in

[1] 7 Opinions Attorney-General, 759.

1602 that monopolies were illegal, except when granted for a reasonable time for a new invention or new trade.[1] In 1623 an act of Parliament concerning monopolies confirmed this common law doctrine, forbidding all grants of monopoly except "letters patent and grants of privilege—of the sole working or making of any manner of new manufacture within this realm to the first and true inventors."[2]

In America patents were first granted by the states. But the national constitution gave Congress the power "to promote the progress of science and the useful acts of securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries." And since a national system has been established inventors have preferred to take advantage of the broader privileges conferred by it than is possible by any state system.

An act of 1790 provided for the granting of patents by a board consisting of the secretaries of State and War and the Attorney-General; and in 1793 another patent act was passed, which committed its administration to the Secretary of State and the Attorney-General.

As in Great Britain, patents were granted upon application, without investigation as to the novelty or utility of the invention, the patentee running the risk of having the grant nullified on proof that he was not the first inventor. Applications for patents increased gradually; and in 1821 the clerk in the department of State having charge of this work was given the title of superintendent of patents. Up to 1836 a total of 9,957 patents had been issued.

In that year another act relating to patents was passed, making radical changes in the law and methods of administration and establishing the system in almost its present form. A special bureau called the patent office was now established in the department of State, with a commissioner of patents in charge. Patents were no longer to be granted to applicants as a matter

[1] Darcy *v.* Allin, 671 Noy, 673; 11 Coke, 86.
[2] 21 Jac. 1, c. 3.

of course; but the new bureau was to issue the grant only after an investigation of all the questions on which its validity might depend. The investigation of the patent office was not made conclusive, in the face of subsequent proof of prior invention; but patents granted after such an official investigation could be reasonably trusted, and were much more secure and valuable than those under the former law. Patents were granted, as before, for fourteen years; but provision was now made for an extension for seven years additional under certain conditions. Other provisions were contained in the act, and some amendments were made during the next few years.

On the creation of the department of the Interior in 1849, the patent office was transferred to it. In 1861 the term of a patent was changed to seventeen years, and the right to an extension was abolished. In 1870 there was a general revision of the patent law, codifying the statutes then in force, but making no substantial changes. This was confirmed and re-enacted in the Revised Statutes of 1875; and with minor amendments constitutes the present law.

As now organized, the patent office consists of the commissioner of patents, an assistant commissioner, a board of examiners-in-chief and a large staff of examiners, clerks, draughtsmen and attendants. The commissioner superintends all operations connected with the issue of patents; has power to issue regulations for the conduct of proceedings in his bureau and has charge of the records, apparatus and other property belonging to the bureau. He is the final judge so far as the patent office is concerned, of all controverted questions arising in the administration of the patents; and the decisions of the commissioner form an important part of rules observed by the office.

In addition to the formal issuing of letters patent to successful applicants, the patent office (1) determines whether an alleged invention is patentable; (2) settles disputes between rival claimants to the same invention, and (3) publishes ex-

haustive information concerning the existing state of the industrial arts.

Examination of applications constitutes the heaviest and the most important part of the work. Over 50,000 applications are now filed every year; and to determine in each case whether the alleged invention does not conflict with any of the 700,000 patents previously issued or with the countless number of unpatented articles in use requires a large body of skilled experts and a thorough systemization of labor. For this investigation the whole mass of material products has been divided into about two hundred classes; and these classes again subdivided into divisions; and each division is assigned to examiners familiar with products assigned to it. On the receipt of an application, with the necessary description, it is referred to the appropriate examiner. If he reports the invention patentable and no rival claims, the patent is allowed; if he reports adversely, the applicant may restate his claim (if that will meet the difficulty), or appeal, first to the higher board of examiners, or finally before the commissioner. A fee of $35 must be paid by the applicant; and the revenue from fees pays all the expenses of the office and leaves a balance to the net income of the treasury.

When rival claimants for the same invention appear, an "interference" is declared. In such cases each of the several claimants is notified to make a written statement under oath, specifying the dates when the invention was conceived and perfected by him. If these establish the priority of one, the patent is issued accordingly; if not, further hearings must be had to determine the facts.

When an inventor, engaged in perfecting his discovery, fears that some one else may apply for a patent on the same invention, he may file a caveat in the patent office, which secures to him a hearing on the question of priority before a patent issues to anyone for the invention. If a patent, already granted, is defective on account of its excessive claims, the mistake may be remedied by filing a disclaimer. When a pat-

ent fails to cover any part of an invention, owing to mistakes in the description or specifications, it may be surrendered and a new one issued.

For disseminating information to the public, the patent office has issued since 1872 a weekly Official Gazette, containing a list of patents issued during the previous week, with abstracts of specifications, drawings and claims and the names of patentees, also decisions of the commissioner on questions of practice and of the United States courts on matters of patent law.

Not everything new is an invention; nor is every invention patentable under the present law. Patents are given for a "new and useful art, machine, manufacture or composition of matter," or "any new and useful design" for a manufacture or to be worked into or imprinted on a manufacture. The word manufacture is held to mean the product of a machine or of human industry. There must be a new product, not simply an old product made better or more rapidly. The term "composition of matter" is understood to include all compositions used for food and other economics of life. Improvements on patented machines may be protected by patents.

Patents are granted only to an original inventor, and to the first inventor in this country. The grant consists of the exclusive right for a term of seventeen years to make, use or sell the patented invention, and the exclusive right to empower others to make and use and sell it. These are property rights and may be transferred by the patentee, either singly or together.

Redress for the infringement of a patent may be sought by an action for damages or a bill in equity for an injunction, the latter being now the most common. Original jurisdiction over such proceedings is vested in the Circuit Courts of the United States, certain Districts courts and the Supreme Court of the District of Columbia.[1] Actions against the government founded upon contracts as to patents are brought in the Court of Claims.

[1] *Revised Statutes*, §§ 571, 629, 1910; 94 U. S. 780.

BUREAU OF EDUCATION[1]

Educational administration within the states is under the control of the state governments; and it is understood that under the constitution of the United States the national government has no authority, either to establish a general school system throughout the country, or to exercise any compulsory control over the state systems. Nevertheless, there has been established a bureau of education in the national administration, although its functions are mainly informational and advisory.

This bureau was established in 1867, as an office independent of any of the principal executive departments; but two years later it was placed under the department of the Interior. At the head of the bureau is a commissioner of education, appointed by the President and Senate at the moderate salary of $3,500 a year. Unlike the commissioner in charge of the bureaus in the department of the Interior previously considered, the commissioner of education has been considered a permanent and not a partisan officer, who holds his position through party changes in the presidency. The staff of the bureau consists of a collector of statistics, three specialists in particular branches of education, and a small force of clerks, copyists and laborers.

It is the duty of the commissioner of education to collect and publish statistics and facts showing the condition and progress of education in the several states and territories, and to diffuse such information respecting the organization and management of schools and school systems and methods of teaching as will promote the development of efficient school systems and the cause of education throughout the United States. He is also charged with the administration of the endowment fund for the support of colleges of agriculture and the mechanic arts,

[1] Charles Warren, *Answers to Inquiries About the U. S. Bureau of Education, Its Work and History* (1883); Annual Statement of the Commissioner of Education to the Secretary of the Interior (1902); *International Review*, 14:284.

and with the supervision over education in Alaska. In the discharge of these duties a voluminous report is issued each year concerning both public and private education in the United States and foreign countries, and also monographs on special educational topics. The bureau has collected one of the most valuable pedagogical libraries in the world; and has been called a sort of educational clearing house. The commissioner speaks frequently at educational meetings, and is recognized as one of the educational leaders of the country; but he has no authority to exercise direct control over the state systems of education.

Propositions have been made that the bureau should be established as a separate executive department, with a Secretary of Education in the President's Cabinet. But with the accepted view as to the limits of the national authority over education, there does not seem to be an adequate basis for such a change. At the same time there would seem to be no good reason why the commissioner of education should not rank in point of salary with the commissioners in charge of the other bureaus in the department of the Interior.

THE GEOLOGICAL SURVEY

A highly technical scientific service is that of the geological survey. Preceded by some special geological investigations, the present service was established in 1879 as a bureau in the department of the Interior. It is under the immediate control of a director, appointed by the President and Senate. This officer makes nominations for appointment by the Secretary of the Interior, as geologists, topographers, engineers, draftsmen and other members of the regular corps of the survey; and may also make some temporary appointments. He has a general charge of the work, and makes reports of the operations and finances at the close of each fiscal year. The position has been filled by scientific experts, who have not been made subject to party changes in the administration.

It is the duty of the geological survey to examine the geo-

logical structure, mineral resources and products of the national domain, and the survey of forest reserves. This includes the preparation of topographic and geologic maps; the measurement of streams and the determination of the water supply of the United States with a view to reclaiming arid lands; and the engineering operations in connection with irrigation works authorized in 1902. The survey is on the one hand a bureau of research in abstract and theoretical questions in geology; and on the other hand a bureau investigating and publishing facts of large practical economic importance.

As a foundation for the more strictly geological work, the survey has undertaken, in coöperation with state authorities, the preparation of a complete topographic map of the United States. About 900,000 square miles, thirty per cent. of the total area of continental United States (excluding Alaska) has been mapped and published in sections.

This has been followed by work on geologic maps, showing the surface geology, and minerals of economic value, with cross sections showing sub-surface conditions. With these maps are published reports on the same areas, the whole furnishing information of great value to geologists, mining engineers and land owners. Similar investigations and reports have been made on the water resources of the country. In all of this work, the policy of the survey has been to deal for the most part with the broader inter-state problems, leaving more detailed economic work to the state surveys. Physical, chemical, lithological and paleontological laboratories are established in the bureau for assisting in the field surveys and carrying on research investigations in special problems, such as determining the best materials for highway construction.

To carry out the irrigation works in the arid regions of the west, recently authorized, a special corps of engineers, known as the reclamation service, has been established.

In addition to the reports of the various scientific investigations the bureau prepares and publishes an annual report of the mineral products of the United States.

THE TERRITORIES

Over some parts of the area under the jurisdiction of the national government, the Secretary of the Interior exercises a supervision of the internal and local government analogous in a slight degree to the control of a European minister of the interior. The districts to which this supervision applies are known as the territories of the United States. They are distinguished on the one hand from the states; and on the other hand from the dependencies in the Western Pacific ocean, whose civil administration is under the supervision of the department of War.

At the present time this supervision extends only to the District of Columbia and the territories of Arizona, New Mexico, Oklahoma, Alaska, the Hawaiian Islands and Porto Rico, besides the Indian reservations previously noted. These comprise about one-fourth of the total area of the United States (excluding the Philippine Islands), but with a total population of only a little over two millions. Most of the states have, however, passed through the stage of government as a territory, and a short account of this form of government is important not only in reference to the regions to which it now applies, but also as a step in the development of state governments.

Over the area of the United States not organized as states the national government has, in addition to the powers it exercises within the states, all the powers of government except as restricted by the national constitution. In the case of the District of Columbia and government property owned as sites for national buildings and works, the constitution specifically authorizes Congress "to exercise exclusive legislation in all cases whatsoever."[1] But for other regions the only basis in the constitution for the authority exercised is the clause that Congress "shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States."[2] The power of Congress

[1] Article I, § 8.
[2] Article IV, § 3.

over the territories has, however, been repeatedly affirmed by the Supreme Court.[1]

Before the adoption of the constitution the Congress of the Confederation had provided, in the ordinances of 1784 and 1787, for the government of the territory northwest of the Ohio river. The Northwest Ordinance was confirmed with minor changes by the new Congress in 1789, and a system similar in most respects enacted for the territory south of the Ohio river in 1796. These measures provided for the appointment by the President and Senate of governors and territorial judges, who should act also for a time as the local legislative authority. But it was further provided that when a given population was reached, there should be locally elected legislatures; while ultimately the territories were to become states, with control over their own constitutions.

This system of territorial government was afterwards extended to the region covered by the Louisiana purchase, Florida, the Oregon country, and part of the Mexican cession. It never applied to the thirteen original states, nor to Vermont, Kentucky, Texas, California and West Virginia. With these exceptions all of the area of continental United States has been at some time governed under the territorial system. From time to time the number and boundaries of territories have been changed, as population increased and new states were created and admitted to the Union.

At the present time the territories of Oklahoma, Arizona, New Mexico and the Hawaiian Islands have similar forms of government. Each has a governor appointed for a term of four years by the President and Senate, who is the chief executive and also the representative of the national authority, having an absolute veto on all the acts of the territorial legislature. Formerly these governors were often sent out from the older states; but it is now customary to appoint residents of the territories. Each has also a secretary, appointed by the President and Senate, and other administrative officers usually pro-

[1] 1 Peters, 542; 16 Howard, 164; 101 U. S. 129; 137 U. S. 202.

vided for by territorial legislation. Still further, each of these has a number of territorial judges, appointed by the President and Senate, who are not part of the national judiciary, but have jurisdiction similar to that of the state judges, and who may be removed from office by the President.

A locally elected legislature in each of this group of territories enacts legislation in accordance with specific grants of power from Congress. This includes the power to organize local governments, and authorize them to levy taxes for local purposes, and to establish an educational system and various penal and charitable institutions. But all of the acts of a territorial legislature must be approved by the governor, while any statute may be annulled by act of Congress. Each of these territories sends a delegate to the House of Representatives, who has a seat, salary and the right to speak, but not the right to vote.

In Porto Rico, the territorial government, established in 1900, is somewhat different. Not only the governor and secretary, but also a commissioner of the interior and a commissioner of education, are appointed by the President; and all of these are sent out from the mainland. These executive officers are also members of the upper house of the legislature; and a majority of the members of the upper house are appointed by the President.

Alaska has a governor, secretary and judges, as in the territories just noted; but many administrative duties are performed by the judges and clerks of courts, and there is no local legislative body, the statutes for this territory being enacted directly by Congress.

The District of Columbia was at one time organized as a territory, but now has a special form of municipal government. Judges and various commissioners and administrative officers are appointed by the President, while local legislation is passed by Congress, which also provides a large part of the revenue for the local government.

National control over the territories has been exercised

mainly by congressional legislation and presidential appointment of local officials. Formerly these officials were classified under the department of State; but that department did not exercise any active control. They are now classified under the department of the Interior; and the governors of the territories and some of the local officials in the District of Columbia[1] make annual reports to the Secretary of the Interior. There is, however, no special bureau in the department offices at Washington charged with these matters; and it is evident that the supervision of the local officials is merely nominal.

In conclusion, mention must be made of some minor and miscellaneous offices and institutions under the general supervision of the department of the Interior. A number of these are in Washington: the superintendent of the Capitol building and grounds, the Government hospital for the insane, the Freedmen's hospital and Howard university. The civilian employees in the national park reservations are also classed under this department.[2]

[1] Columbia Institution for the Deaf and Dumb, Register of Deeds and Register of Wills.

[2] Yellowstone park in Wyoming; Yosemite, General Grant and Sequoia parks in California; Mt. Ranier park, Washington; Crater Lake park, Oregon; Wind Cave park, South Dakota; Hot Springs Reservations, Arkansas, and Rock Creek park, District of Columbia.

CHAPTER XV

The Department of Agriculture

References.—C. H. Greathouse: Historical Sketch of the Department of Agriculture, in Year Book of the Department for 1897.—*American Law Review*, 30:787.—*Nature*, 64:372.—*Science*, 9:199; 13:321.—*National Geographical Magazine*, 14:35.

Weather Bureau

Popular Science Monthly, 53:307.—*Forum*, 25:341.—*Living Age*, 224:579.—*Engineering Magazine*, 1:772.—*Chautauquan*, 14:291.

While the title of the department of Agriculture indicates what is perhaps the most important field of its activities, its functions have been extended to include the whole range of rural industry, and some branches of administration only very indirectly related to agricultural interests.

It is but a few years since the department was organized as one of the principal executive departments; but its beginnings can be traced from an earlier time. Even during the colonial period there were some desultory instances of government aid and encouragement to agriculture, both by the colonial authorities and the British Parliament. Soon after the national government was organized some attempts were made to establish a board of agriculture; but neither the first proposal in 1796 nor a second effort in 1817 were successful. Some of the United States consuls introduced, on their own initiative, some new plants and new breeds of animals; and a few special reports on agricultural topics were published as congressional documents. But no systematic work was done and no official organization established for fifty years after the adoption of the constitution.

In 1836 the commissioner of patents—H. L. Ellsworth—began the distribution of considerable quantities of seeds and plants received from various government representatives in foreign countries; and three years later through his influence an appropriation of $1,000 was made for the purpose of procuring and distributing seeds of new plants, carrying on agricultural investigations and collecting agricultural statistics. This work was performed directly under the commissioner of patents, then an officer in the department of State. By 1841 some 30,000 packages of seeds were distributed, and agricultural statistics, gathered in the fifth census, were published in 1842. Both the distribution of seeds and the publication of agricultural statistics and reports were continued from this time. In 1849, when the patent office was transferred to the department of the Interior, there appears in the official register a collector of agricultural statistics, the first officer especially assigned to this work; and after 1857 there is a small force of clerks in the section of agriculture in the patent office.

A more important step was taken in 1862, when there was established a "department" of agriculture, independent of the executive departments, and ranking rather as a bureau with a commissioner in charge. Isaac Newton, then chief of the agricultural section in the patent office, was appointed as the first commissioner of agriculture. Other officers provided included a statistician, a chemist, an entomologist, and a superintendent of the propagating garden and experimental farm, their titles serving to indicate in a general way the character of the work done by the new department.

From this time additions were steadily made to the functions of the department and new offices were established to meet these conditions. In 1868 a botanist was appointed, and in 1871 a microscopist. In 1877 a forestry division was created. A year later a special investigation into animal diseases was begun; and in 1884 a special bureau of animal industry was established to carry on this work. In 1887 agricultural experiment stations throughout the country were first established; and at

the same time new scientific divisions in pomology, ornithology and mammalogy were formed. Meanwhile, too, the activity of the older divisions had steadily increased.

In 1889 the department of Agriculture was raised to the rank of an executive department; and its principal official became the Secretary of Agriculture, who is given a seat in the President's Cabinet. At that time there were no important changes in the internal organization or functions of the department; but since then further additions have been made. In 1890 the inspection of exported cattle was begun; in 1891 the weather bureau was transferred from the department of War to the department of Agriculture; in 1892 experiments in irrigation were commenced; in 1893 a road inquiry office was established, in 1894 a division of soils, and in 1895 a division of agrostology. More recently there has been some readjustment and reorganization of the various branches of the department with the expansion of their activities.

Before the change in the rank of the department in 1889, its chief officer, the commissioner of agriculture, had direct supervision of the scientific work of the department, and was usually qualified for this function; although political considerations had some weight in making appointments, and changes were usually made in each presidential term. Since the head of the department has become a secretary in the President's Cabinet the political character of the office has been more emphasized. The Secretary of Agriculture has for the most part confined himself to executive duties; while the immediate supervision of the technical scientific investigations has been exercised by the assistant secretary.

The functions of the central offices of the department consist simply of general supervision over the various subordinate offices; and it is by an examination of the latter that the work of the department as a whole can best be learned. The most important of these subordinate offices are classed as bureaus, while others are known as divisions or simply as offices. In the various bureaus and other offices of this department, not only

are the subordinate positions governed by the civil service rules, but the bureau and division chiefs have also been permanent officers, not affected by political changes in the administrative system.

Significant features in the work of the department are the emphasis on scientific methods and the almost complete absence of compulsory powers. Most of the subdivisions consist mainly of a small force of technical experts at Washington, and perhaps a few special agents in the field; and only two bureaus have an elaborate system of local agents throughout the country. Only the bureau of animal industry has authority to require private citizens to obey its orders, and that only in reference to inter-state and foreign commerce. In all other lines the results of the work of the department are simply offered to those who wish to use it.

This situation is doubtless due in the main to the fact that there has been no demand for restrictive measures regulating agricultural interests; but it may also be due in part to doubt as to the constitutional authority of the national government to deal with agricultural questions not directly related to inter-state or foreign commerce. It has been maintained that much of the work now undertaken would not stand the test of the courts;[1] but no such test has been applied, and it would seem that the present methods are now firmly established.

The Weather Bureau.—In 1863 the department of Agriculture began the publication of meteorological data gathered by the Smithsonian Institution. On the recommendation of the commissioner of agriculture a service of daily weather reports was authorized by Congress in 1870, conducted by the chief signal officer of the army. In 1891 this weather service was transferred from the department of War to the department of Agriculture, and organized as a special bureau.

It is the duty of the weather bureau to record the climatic and meteorological conditions and to gauge the principal rivers throughout the United States; to prepare and dis-

[1] *American Law Review,* 30:787.

tribute weather reports; and to issue forecasts of weather changes and floods, for the benefit of agriculture, commerce and navigation. In connection with these duties it performs a continuous scientific investigation into the conditions and causes of meteorological changes, for the purpose of increasing the reliability and range of its forecasts.

To carry on this work the bureau has a large number of local agencies. There are about 200 stations, fully equipped for making complete records, throughout the United States and at various points in the Caribbean Sea. There are also many other stations where records of temperature and rainfall are made; and over 3,000 posts where voluntary observers make and report observations of temperature and rainfall with standard instruments. Records of local observations taken at the same time are telegraphed to Washington and various district centers; and are the basis for reports and forecasts for different sections of the country. For the most part private telegraph lines are used for transmitting reports; but over 400 miles of telegraph and cable lines have been constructed by the bureau to special points.

For the distribution to the public of the weather reports and forecasts, the bureau has 250 stations for the display of storm and cold wave warnings; while over 2,000 places receive forecasts daily by telegraph or telephone at government expense, and more than 200,000 forecasts are issued daily by telephone, telegraph and mail without expense to the government.

Special services have charge of the gauging of rivers in time of floods and climatic and crop reports in the agricultural regions.

At the central office of the bureau in Washington there are various divisions corresponding to the different branches of work, with other divisions having charge of scientific research, the publication of records, the purchase of supplies, and accounts. The total paid force connected with the bureau is about 1,400; while there are also over 3,000 voluntary weather observers and 14,000 voluntary crop correspondents.

The Bureau of Animal Industry has for its principal object the suppression of dangerous communicable diseases in live stock, particularly in connection with the foreign trade. It makes investigations as to the existence of such diseases, through a system of inspection, both of live stock and their products, at the principal slaughtering centers in the United States and at import and export points.[1] Its examinations include that of vessels for the transportation of export animals and of quarantine stations for imported live stock. The bureau further carries on a continuous scientific research into the nature, causes and prevention of various communicable diseases. It also superintends the measures for extirpating such diseases, not only by condemning diseased animals, but by controlling the inter-state movement of live stock. Among the important results of the bureau's work have been the suppression of a serious epidemic of pleuro-pneumonia in cattle in the early nineties and the control of Texas fever.

More recently the bureau has been given special duties in relation to dairy products. It inspects the manufacture of renovated butter, supervises its inter-state commerce, and inspects dairy products for export.

Since its establishment, twenty years ago, the bureau has been in charge of the same chief, Mr. D. E. Salmon.

The Bureau of Plant Industry has recently been formed by grouping together a number of separate divisions. Most of these divisions are engaged in strictly scientific experimental investigations, carried on for the most part in Washington;

[1] INSPECTIONS FOR THE YEAR ENDING JUNE 30, 1903

	ANTE MORTEM		POST MORTEM	
	Total Inspections	Rejected	Total Inspections	Condemned
Cattle	11,988,760	41,560	6,165,890	14,605
Sheep	14,654,249	17,887	8,598,175	15,233
Calves	1,041,138	5,542	670,173	1,629
Hogs	31,546,222	61,297	21,827,047	46,994
Horses	344		344	11
Total	59,230,713	125,886	37,261,629	78,472

and there is no large list of local agents in different parts of the country.

Oldest among these divisions is that which continues the work of seed distribution, which was the origin of the department of Agriculture. But this is no longer a means of introducing new varieties of plants or promoting the development of agriculture. Something like 40,000,000 packets of miscellaneous garden and flower seeds are distributed, on orders of members of Congress to their constituents; and the work of the bureau consists in purchasing the seeds in bulk in the open market, contracting for putting them up in small packets, and carrying out the mechanical work of distribution. There have been many attempts by the Secretaries of Agriculture to abandon this work, but Congress insists on its continuation.

Another division has charge of the collection and distribution of seeds and plants of new and valuable agricultural crops adapted to different parts of the United States.

Four branches of the bureau investigate special phases of plant life in relation to agriculture. One deals with vegetable pathology and physiology, studying diseases of agricultural crops and economic plants, nutrition of plants, rotation of crops, and problems of crop improvement by means of breeding and selection. Another has charge of botanical problems, including the purity and value of seeds, methods of controlling the introduction and spread of weeds, and the injurious effects and antidotes in case of poisonous plants. A third investigates the natural history, geographical distribution, methods of cultivation and uses of grasses and forage plants, and their adaptation to various soils and climates, introducing promising varieties. And the fourth deals with pomological investigations, studying the habits and qualities of different fruits, their adaptability to various soils and climates and conditions of culture, and the methods of harvesting, handling and storing fruits.

Several subdivisions of the bureau have charge of the experimental gardens and farms operated in connection with the

scientific investigations. One has control of the grounds around the department buildings, including their general care and ornamentation, the management of the conservatories, and investigations in relation to the culture of plants under glass and intensive horticulture. An experimental farm has been established at Arlington, Va., designed to become an adjunct to all branches of the department. And experiments in tea culture are being carried on at Summerville, S. C., and Pierce, Texas.

The Bureau of Forestry has for its main duty to promote the greatest permanent usefulness of the forest interests of the United States. It carries on scientific investigations as to the methods of forest management, studies the special uses and adaptability of commercially valuable trees, and tests the strength and durability of construction timbers. It also gives practical advice to lumbermen and owners of forest lands as to the conservative handling and extension of forests; and, at the request of the Secretary of the Interior, it makes plans for the management of the national forest reserves. The distribution of forest work among several bureaus in separate departments is not conducive to the most effective results; and it is proposed to unite all of the forestry service in this bureau.

The Bureau of Chemistry maintains a series of laboratories for investigating the chemical composition of fertilizers, agricultural products, foods, drugs and other articles. Its principal independent work has been in discovering food adulterations and experimenting to ascertain the effects of various food preservatives. It also coöperates with the other bureaus of the department and with the other executive departments in making chemical analyses covering a wide range of subjects.

The Bureau of Soils has charge of investigating the properties of different soils and determining their relation to crop production. It is engaged in making an extensive soil survey over the country and mapping the results; and carrying on physical and chemical investigations in its laboratories. Spe-

cial attention has been given to the reclamation of alkali lands and the cultivation, curing and fermentation of tobacco.

The Bureau of Statistics includes the former division of statistics and the division of foreign markets. The first of these collects data as to the production of crops and farm animals, through a corps of county and township correspondents, traveling agents and other sources; and gathers similar information from foreign countries through special agents, consuls, and agricultural and commercial authorities. It tabulates and coördinates the statistics collected from various sources, and issues a monthly crop report.

It is the object of the division of foreign markets to promote the extension of the agricultural export trade of the United States. This it does by collecting and publishing the records of the production, importation and exportation of farm and forest products in different countries, investigating the conditions of demand and supply, the requirements of foreign markets and the obstacles to trade extension.

The Division of Entomology carries on investigations in reference to insects injurious to agricultural plants, makes experiments to discover the best methods of suppressing injurious insects, and publishes and disseminates information on these points for the benefit of the agricultural interests. It has also conducted investigations with a view of introducing silk worms into the United States and developing bee culture.

The Division of Biological Survey has charge of three distinct lines of investigation: mapping the boundaries of natural life and crop zones of the country, with a view to determining the agricultural products suitable to different climatic conditions; studying the economic relations of birds to agriculture and horticulture, so as to determine what birds are useful and what are injurious; and the preservation and introduction of game, including supervision over the importation of foreign birds, to prevent the introduction of undesirable species.

The Office of Experiment Stations has charge of the relations of the department to the experiment stations connected with

the state and territorial agricultural colleges; it directly manages agricultural experiment stations in Alaska, Hawaii and Porto Rico; and it carries on special investigations on the nutritive value of human foods and on irrigation engineering. It collects and publishes general information about the local institutions, indicates to them special lines of investigation, and aids in the conduct of coöperative experiments.

The Office of Public Road Inquiries has for its purpose to promote the improvement of public highways throughout the United States. It collects information about systems of road management; it conducts and promotes investigations and experiments as to the best methods of road building; it coöperates with the bureau of chemistry in testing and studying the chemical and physical properties of road materials; it prepares publications to disseminate information on the subject of road making; and it advises and assists local authorities in the construction of experimental or illustrative sections of improved roads.

There remain a few other branches of the department, which are in the main auxiliary to those already noted. The division of publication edits the various documents (except those of the weather bureau) supervises their printing, and has charge of their distribution. The division of accounts and disbursements deals with the expenditures and financial interests of the department. The Library consists of over 80,000 volumes, bearing on agricultural questions and the work of the various bureaus and divisions in the department.

CHAPTER XVI

The Department of Commerce and Labor

References.—*Annals Amer. Acad. Soc. and Pol. Sci.*, 24:1.—*World's Work*, 5:3334.—*Independent*, 52:412.—Act of February 14, 1903.—Reports of Department of Commerce and Labor; Carroll D. Wright: The Working of the Department of Labor.

Bureau of the Census

Carroll D. Wright: History of the Census.—*Political Science Quarterly*, 1:107; 5:259; 11:589.—*Publications of the American Economic Association*, New Series, No. 2.—*American Statistical Association*, 1:71.—*North American Review*, 170:99.—*Century*, 43:831; 44:712.—*Forum*, 30:109.

Bureau of Navigation

J. D. J. Kelly: The Question of Ships.—W. W. Bates: American Navigation.—W. L. Bates: The American Merchant Marine.—*North American Review*, 125:544; 158:433; 175:829; 176:490.—*American Journal of Social Science*, 9:101.—*New Jersey Law Journal*, 9:82.

Lighthouse Establishment

A. B. Johnson: The Modern Lighthouse Service.—*Cassier's Magazine*, 6:297.—*Century*, 32:219.—*American Catholic Quarterly*, 17:413, 644, 873.—*Overland*, n. s. 33:312.

Coast and Geodetic Survey

Science, 7:2, 460; 8:359; 12:50; 18:33.—*Ecl. Engineering*, 35:38.—*National Geographical Magazine*, 14:1.

Bureau of Fisheries

Harper's Monthly, 49:213.—*North American Review*, 176:593.—*Science*, 12:219; 18:476.

Bureau of Immigration

Richmond Mayo-Smith: Emigration and Immigration.—*Political Science Quarterly*, 3:46, 197, 409; 4:480; 7:232; 19:32.—*North American Review*, 40:457; 163:252; 165:393; 175:53; 178:558; 179:226, 263. *Atlantic Monthly*, 75:345; 77:822; 86:535.—*Forum*, 30:555.—*Annals Amer. Acad. Soc. and Pol. Sci.*, 24:169.—*World's Work*, 1:381.—*Catholic World*, 71:110.

Last to be established among the principal executive departments of the national administration is the department of Commerce and Labor, authorized by act of February 14, 1903, and brought into active existence on July 1 of that year. It must not be supposed, however, that this was the first step in establishing national administrative control in this field. One of the most important powers of the United States government is the regulation of inter-state and foreign commerce; and from the beginning of the government under the constitution acts of Congress have been passed in reference to these matters, and special officers provided for administering these statutes. As the result of many of such acts a great variety of administrative bureaus with a host of officials and agents had been developed. But these various bureaus and officials were not organized into any administrative system; they were scattered through the different departments, and in some cases outside of all of the departments, without any unifying relation. By the creation of the department of Commerce and Labor most of these bureaus have been taken from departments with which they had little or no logical relation; and have been brought together into the new department, where their work can be coördinated and harmonized. At the same time two new bureaus—the bureau of corporations and the bureau of manufactures—have been established in the new department.

It will serve to give a general idea of the field allotted to this department, to name the various bureaus transferred to its control. The larger number were formerly in the Treasury department, from which came the bureaus of statistics, navigation, immigration and standards, the lighthouse and the steamboat inspection services and the coast and geodetic survey. From the department of State was taken the bureau of foreign commerce; and from the department of the Interior, the census bureau; while the formerly unattached department of labor and fish commission have also been added. It may be noted that this does not include all of the administrative authorities dealing with commercial matters. The inter-state

commerce commission is still left outside of the new department, and remains unattached to any of the executive departments; while the life-saving service remains in the department of the Treasury.

At the head of the department is the Secretary of Commerce and Labor, and an assistant secretary, with a small staff of clerks. In inaugurating the new department the secretary has given personal attention to the readjustment of work among the various bureaus, so as to avoid overlapping and duplication of effort, and to secure a better coördination of duties. He has general supervision over all the bureaus in the department; and it is his duty to make special investigations at the request of the President or Congress and to make annual reports to Congress on the work of the department. Attached to the immediate office of the secretary are the small number of special agents and inspectors in the seal islands of Alaska and supervising salmon fisheries.

The Bureau of Corporations is authorized to investigate the organization, conduct and management of the business of any corporation, joint stock company or corporate combination engaged in inter-state or foreign commerce, except common carriers subject to the inter-state commerce act. It is to collect and report to the President such information as will enable him to make recommendations to Congress for legislation regulating such commerce, and to publish such part of this information as the President may direct. To accomplish these purposes, the commissioner of corporations is given the same powers as the inter-state commerce commission, including the right to subpoena and compel the attendance of witnesses and the production of documentary evidence and to administer oaths.

It is also the duty of the bureau to gather, compile, publish and supply useful information concerning corporations engaged in inter-state or foreign commerce, including insurance corporations.

The Bureau of Manufactures was not established during the

first year of the new department. It will be in charge of a commissioner, and its province will be to foster, promote and develop the manufacturing industries of the United States, and extend their markets, by compiling and publishing information concerning these industries and markets. It is made the duty of consular officers to collect such information in foreign countries for the use of this bureau.

STATISTICAL BUREAUS

The Bureau of Labor was first organized in 1885 as a bureau in the department of the Interior. In 1888 the duties of this bureau were transferred to a newly created department of Labor, with enlarged powers. This new department was not attached to any of the principal executive departments; nor did it rank as another coördinate department. Its chief officer retained the bureau title of commissioner, and was not admitted to the President's Cabinet,—his position corresponding to that of the commissioner of agriculture from 1882 to 1889. This department of labor has been incorporated into the newly established department of Commerce and Labor. appearing again as a bureau.

At the head of the bureau is the commissioner of labor, appointed by the President and Senate; but the position has been considered non-political in character. Carroll D. Wright occupied the post from 1887 to 1904. The staff of the bureau consists of clerks, statistical experts at Washington, and traveling special agents.

It is the duty of the bureau "to acquire and diffuse among the people of the United States useful information on subjects connected with labor in the most general and comprehensive sense of the word, and especially in its relations to capital, the hours of labor, the earnings of laboring men and women, and the means of promoting their material, social, intellectual and moral prosperity." Its principal work has been the collection and publication of a series of elaborate statistical investigations on various questions connected with industrial labor, and the

issue of a bi-monthly bulletin containing shorter papers on special topics within the same field, labor laws and labor reports of the states and foreign countries, and, for a few years, municipal statistics of the principal American cities. Among the more important investigations may be mentioned those on strikes and lockouts 1881-1900, costs of production in iron, textile and glass industries, industrial education, municipal and private ownership of water, gas and electric light plants.

In spite of the controverted nature of the problems considered, the bureau has established and maintained a reputation for impartiality and accuracy in its investigations. In pursuance of this policy the reports of the bureau do not attempt to interpret the facts presented or to recommend definite measures. As a result it is difficult to trace directly the effects of the investigations in legislation; but there can be no doubt that the indirect effects have been of much importance.

The Bureau of the Census has only recently been organized on a permanent basis; but a national census has been taken at every decade since 1790, in accordance with the requirement of the constitution. At first the census work was in charge of the department of State, with the United States marshals arranging the details in their respective districts and sending in the returns. At the seventh census, in 1850, the Secretary of the Interior was given general supervision; and a census board, consisting of the Secretary of State, the Attorney-General and the Postmaster-General, was formed to prepare the schedules for the more extended inquiries then inaugurated.

For the ninth census, General Francis A. Walker was appointed superintendent, and introduced important changes in methods; but the local enumeration was still performed under the direction of the marshals. In 1880 the use of marshals was discontinued, and a body of census supervisors was organized, each having charge of the enumerators in a specified district. This plan was again followed for the eleventh and twelfth censuses.

Up to this time the whole corps of census officials had to be newly organized for each census; but in 1902 provision was made for a permanent bureau of the census. This was at first placed in the department of the Interior, which had supervised the work for several decades; but on the creation of the department of Commerce and Labor, the bureau was transferred to it.

As now organized, the bureau consists of a director, appointed by the President and Senate, four chief statisticians and a large force of clerks and special agents. The corps of district supervisors and local enumerators will still have to be reorganized each decade.[1]

It is the duty of the bureau to take a census of the United States every ten years, and to collect such special statistics as are required by Congress. The range of inquiries at the decennial census has increased enormously from the six questions used in 1790. Complex systems of inquiries are now ascertained, not only in reference to population, but also on vital statistics, agriculture and manufactures, with additional investigations on the defective and criminal classes, state and local finances, transportation, mining and other subjects. With the permanent bureau statistics are to be collected in

[1] DEVELOPMENT OF THE CENSUS SERVICE

The Century Magazine, 43:838.

Census Year	Number of Employees	Time for enumeration	Time to publication of population		Total pages in reports	Total cost	Total population
		Months	Years	Mos.			
1790....	667	18	1	8	56	$ 44,377	3,929,214
1800....	924	16.5	1	6	74	66,386	5,308,483
1810....	1,130	10	1	3	413	177,699	7,239,881
1820....	1,229	15	1	7	288	208,526	9,638,453
1830....	1,598	14	1	10	171	378,545	12,866,020
1840....	2,236	??	1	9	890	833,371	17,069,453
1850....	3,436	20.5	1	9	1,605	1,423,351	23,191,876
1860....	4,665	??	3	9	2,879	1,969,377	31,443,321
1870....	7,111	15	2	4	2,406	3,421,198	38,558,371
1880....	33,027	1	2	10	5,245	5,790,678	50,429,345
1890....	50,122	1	4	10	10,220	11,547,127	62,979,766
1900....	59,373	1	1	7	10,900	11,854,817	76,149,386

1905 on manufactures, births and deaths, cotton production, and municipal matters. The bureau has also had charge of the compilation and tabulation of the results of the census of the Philippine Islands taken in 1903.

The Bureau of Statistics combines the functions of the former bureau of statistics in the department of the Treasury (established in 1866) with those of the bureau of foreign commerce in the department of State. It is primarily an office for the compilation and publication of commercial statistics and consular reports.

Statistics of foreign commerce, collected through the customs service, are prepared in great detail, showing imports and exports by countries and customs districts, duties collected on each class of imports, and the movement of vessel tonnage in the foreign trade at United States ports. In recent years information in regard to the leading features of internal commerce has also been published, including the traffic on the great lakes and commercial data for the principal seaports and inland centers; but there is no complete system of data for this branch of the work and most even of the statistics published in this line are secured through unofficial organizations.

A monthly summary of finance and commerce is published, showing the data on all the above mentioned points; and these monthly records are later compiled in a comprehensive annual report. Additional reports on special topics in connection with foreign and colonial commerce are also published from time to time. And the bureau prepares and issues the Statistical Abstract of the United States, which gives a general summary, covering most of the departments in the national administration, with additional statistics from other sources.

Consular reports on commercial matters are published first in daily bulletins and later in a monthly pamphlet. Special consular reports are also published at irregular intervals on various subjects on which inquiries have been sent to the consuls. And the annual report to Congress on the commercial relations of the United States is made by the bureau.

MARINE COMMERCE

Several bureaus in the department of Commerce and Labor have to do with matters affecting the interests of merchant shipping and water-borne commerce. It will not only be convenient to consider these in one group; but this method may also call attention to the larger use made by the national government of its powers over inter-state and foreign commerce in relation to marine traffic as compared to railroad traffic. It may also be noted here that, in addition to the bureau of navigation, the steamboat inspection service, the lighthouse service, the coast survey and the bureau of fisheries in this department, the life-saving service in the department of the Treasury belongs in the same group of administrative services. Moreover the customs administration has a large influence on shipping interests, while the admiralty jurisdiction of the United States courts gives the judicial branch of the national government important functions in the same field.

So far as the bureaus here under consideration are concerned, the constitutional basis for the authority of the national government is the power of Congress to regulate foreign and inter-state commerce. This comprehends authority over such commerce, not only on the high seas, but also on all the navigable waters of the United States which are accessible from a state other than that in which they lie, although ownership and dominion over navigable waters within a state belongs to the state. The national jurisdiction includes the power to keep such inter-state navigable waters open to navigation and to remove obstructions to navigation interposed by the states or otherwise. It embraces control over navigation and implies the incidental power to regulate the essential instrumentalities incident to it, including ships, steamboats and all manner of vessels that go upon navigable waters from one state to another, or out of a state into the sea, coastwise or upon the sea to foreign countries.[1]

[1] Gibbon *v.* Ogden, 9 Wheaton, 1; Gilman *v.* Philadelphia, 3 Wallace (U. S.) 713; The Daniel Ball, 10 Wallace (U. S.) 557.

Laws affecting navigation were passed by the first Congress under the constitution. Their most important feature was the imposition of discriminating duties, both on imported merchandise and on tonnage, in favor of American built and American owned vessels. This restrictive policy was in accordance with the navigation acts of other countries at that time; and in 1817 was carried further by prohibiting foreign built or foreign owned vessels from engaging in coasting trade in the United States. Natural advantages in the construction of wooden vessels, and the profits of trade as neutrals during the European wars, caused a rapid development in American shipping from the end of the eighteenth century until after the middle of the nineteenth. But with the change from sail to steam and from wooden to iron and steel construction, there has been a great decline in American vessels in the foreign trade; although domestic shipping, guarded from foreign competition, has continued to increase.

The Bureau of Navigation was established in 1884, as a bureau in the department of the Treasury, to organize more effectively the national supervision over the merchant marine, to investigate the operation of the navigation laws, and to recommend changes in them. It has charge of the registration of American vessels in the foreign trade (formerly in the hands of the register of the treasury), and of the enrollment and licensing of American vessels in the coasting and fishing trades. It supervises the laws relating to the admeasurement of vessels, their original letters and official numbers; and has the final decision of questions relating to these subjects, and to the collection and refund of tonnage duties. It prepares annually a list of American merchant vessels, and is empowered to change the names of vessels.

It also has supervision over the shipping commissioners, who are established at the principal ports of the United States. These shipping commissioners are public officers who supervise the shipping articles or the contracts of seamen with the masters, regulating their wages and describing the voyage and

term of service; and also enforce the laws for the protection and relief of seamen, in reference to the seaworthiness of ships, provisions, damages for unjust treatment, discipline, desertion and the punishment of mutiny and other crimes. At less important ports, where no shipping commissioner is appointed, the duties may be performed by the collector of customs or his deputy.

Under the act of 1903 the bureau of navigation was transferred from the department of the Treasury to the department of Commerce and Labor, but its functions were not altered.

The Steamboat Inspection Service inspects not only steam vessels, but also sailing vessels, and examines the qualifications of navigation and engineering officers on such vessels, for the protection of life and property on the water. As early as 1838 the national government established a system of local inspectors, appointed by the United States district judges, to examine the hulls, boilers and machinery of steam vessels, and to issue certificates to vessels found in a satisfactory condition. This system did not prove adequate; and an increasing number of steamboat boiler explosions, resulting in serious loss of life, led to the reorganization of the service by an act of 1852. This introduced a new system of choosing the local inspectors; and provided for supervising inspectors to be appointed by the President and Senate, who should adopt general rules and supervise the local inspectors under the general direction of the Secretary of the Treasury. In 1903 the service was transferred *en bloc* to the new department of Commerce and Labor.

As now organized this service has at its head an inspector-general at a salary of $3,500 a year, and ten supervising inspectors. All of these meet once a year (on the first Wednesday in January) as a board, which establishes and amends the regulations, supplementing the statutory provisions, governing the system of inspections and examinations. Each supervising inspector has also supervision over the local inspectors within an assigned district. Local inspectors are appointed at all the

important ports, with assistant inspectors at the largest places, classed as inspectors of hulls and inspectors of boilers.

An inspection must be made once a year of the hulls, appliances, boilers and machinery of all steam vessels (also gas and other motor vessels employed as common carriers) as to their stability, accommodations and safety and the provision of fire apparatus, life preservers and life boats. Sailing vessels of over 700 tons and other vessels and barges of over 100 tons must also be inspected once a year with reference to the stability of construction for their particular service. Iron and steel plates for marine boilers are inspected at the mills where manufactured; and only approved plates properly stamped by the inspectors may be used in the boilers of steam vessels. Any steam vessel which has not complied with the provisions of the law will be refused registry or enrollment, and is liable to a fine of $500 for each offence. The regulations do not apply to vessels doing business solely within a state;[1] but most even of such vessels find it an advantage to have the United States inspection certificate.

Local boards of inspectors also examine and issue licenses to qualified masters, chief mates, other mates in charge of a watch, pilots and engineers of steam vessels, and masters and chief mates of sailing vessels over 700 tons. It is unlawful to employ any person in any of these capacities who is not licensed by the inspectors. These licenses may be suspended or revoked for incompetence, misbehavior or negligence; and in cases of accidents the local inspectors hold investigations to determine who was at fault. Action by the inspectors does not, however, interfere with criminal prosecutions or civil suits for damages before the judicial courts.[2]

[1] 6 Ben. U. S. 42.

[2] The appalling loss of life in the burning of the steamer *General Slocum* in New York harbor on June 15, 1904, led to a special investigation which disclosed gross negligence in the inspections at the port of New York. The local officials responsible have been removed; and the regulations of the service have been revised for the purpose of preventing similar disasters.

In cases of collision and other accidents responsibility is often determined in accordance with established rules of navigation, as to lights, signals, lookouts, special precautions in fog or in narrow channels, and steering directions. Such rules developed at first by customary usage on the sea, enforced by decisions in the admiralty courts; but are now placed on a statutory basis. In 1864 Congress adopted the rules in the English Merchants Shipping Act, which have since been amended from time to time. There are now four sets of navigation rules, varying in certain provisions, governing the navigation of vessels in United States waters: the international rules on the high seas, the inland rules, the rules for the great lakes and their tributaries, and the rules for western rivers.

The Lighthouse Establishment has charge of lighthouses and other aids to navigation for the protection of marine commerce. This branch of the national administration began at the very outset of the government under the constitution, when, in August, 1789, the United States accepted the cession of the title to and joint jurisdiction over the eight lighthouses previously established in the maritime states. These lights were placed under the direction of the Secretary of the Treasury; and until 1820 were either under the direct control of that officer, or, for two periods,[1] under the immediate control of the commissioner of revenue. From 1820 to 1852 the lighthouses were directly in charge of the fifth auditor of the treasury, who was popularly known as the general superintendent of lights. At the end of this period the establishment had increased to 325 lighthouses and lightships, with numerous buoys and other aids to navigation at the various ports. At first the collectors of customs acted as local superintendents of lights within their customs districts; but in 1838 the Atlantic and lake coasts were divided into eight districts, and a naval officer assigned to each.

In 1852, as the result of several investigations, the administration of the lighthouse service was reorganized. There was

[1] 1792-1802 and 1813-1820.

created the lighthouse board, composed of the Secretary of the Treasury as president, three naval officers, three engineer officers of the army and two civilians of high scientific attainments. At the same time two new districts were established on the Pacific coast. Since then, as the service has developed, additional districts have been organized on the Gulf of Mexico and for the interior rivers. On the organization of the department of Commerce and Labor, the whole establishment was transferred to it, the Secretary of Commerce and Labor taking the place of the Secretary of the Treasury as president of the board.

General superintendence of the service remains in control of the lighthouse board, which forms a marked exception to the prevailing system of single-headed bureaus in the national administration. In addition to its *ex-officio* president, the board elects a chairman, who ordinarily presides at the meetings and signs the more important letters. One of the naval officers on the board is assigned as naval secretary, who has charge of the office staff, the personnel of the lighthouse service, the maintenance of lights and care of vessels belonging to the establishment. One of the army engineer members is assigned as engineer secretary, who has control over the real estate, lighthouse buildings and apparatus connected with the service.

In the sixteen lighthouse districts the same dual system of administration is applied. Each district has a navy officer as inspector, who supplies the lighthouses and lightships with lighting material, rations and fuel, maintains buoys, makes nominations for the promotion and transfer of keepers and is responsible for the maintenance of discipline. He also has control over the vessels employed for carrying supplies and locating buoys. Each district has also an engineer officer from the army, who has charge of the real estate, buildings and apparatus, and control over the machinists, carpenters and laborers employed in construction and repair work.

Keepers and assistant keepers of lighthouses are appointed

by the Secretary of Commerce and Labor. The establishment now consists of about 1,500 lighthouses and beacon lights, 50 lightships, 2,000 post lights and 6,000 buoys, with 40 steam tenders, 1,600 keepers, 1,200 men in the crews of vessels, and 1,600 laborers in charge of post lights in rivers and harbors. The annual expense for maintenance is about $4,000,000.

The Coast and Geodetic Survey is charged with the survey of the coasts under the jurisdiction of the United States, and of rivers to the head of tide-water ship navigation for purposes of commerce and defense. This includes hydrographic investigations of depths, tides and currents, not only along the coasts and rivers, but also throughout the Gulf Stream and Japan stream; and topographical determinations of heights and geographical positions by geodetic leveling and continental triangulation (based on trigonometic and astronomical calculations), so as to furnish points of reference for state surveys and connect the work on the Atlantic with that on the Pacific coast. To secure accurate data for this work there has been also carried out a large amount of scientific research in connection with the force of gravity and the variations of the magnetic needle.

General management of the survey is in the hands of the superintendent, who has direction of the force of assistants, draughtsmen, computers and clerks. A number of vessels are employed in making observations, while the calculations and correlation of the data are performed mainly at Washington. The field of operations has recently been extended to include Porto Rico, the Hawaiian Islands and the Philippine Islands.

Results of the survey are published in various forms mainly for the benefit of navigation interests. These include sailing, coast, harbor and river charts; annual tide tables, issued in advance; coast pilots, with sailing directions for navigable waters; and monthly notices to mariners, containing current information necessary for the safety of navigation. Annual reports show the work performed, with professional papers discussing the scientific value of the results.

The Bureau of Fisheries promotes the propagation of food fishes and otherwise advances the interests of commercial fisheries. It originated in the appointment of a commissioner in 1871 to investigate the diminution in the supply of food fish. A year later a small appropriation was made by Congress to continue the investigation and provide for the introduction of useful fishes into American waters; and since then there has been a steady development both in the biological and economic investigations and in fish culture and distribution. For sixteen years the work was in charge of Professor Baird of the Smithsonian Institution, who served without additional salary; but in 1888 provision was made for a salaried commissioner. In 1903 the fish commission, hitherto unattached to any of the executive departments, was included as a bureau in the new department of Commerce and Labor.

Three lines of work are carried on by the bureau: investigation, fish culture and distribution, and the collection of statistics of fisheries. The inquiry into the causes of decrease of food fishes has developed into extensive biological investigations by scientific naturalists, carried on mainly at the marine stations at Woods Holl, Mass., and Beaufort, N. C. A systematic survey of ocean fishing grounds has also been carried out. For the work of fish culture, thirty-five hatcheries are maintained in various parts of the country; and from these public waters are stocked with young food fish to the extent of over a thousand million a year. In connection with the statistics of fisheries, a study is made of fishing methods, and information is distributed concerning the most approved methods and the best utilization of fishery products.

The Bureau of Immigration has charge of the inspection of immigrants and the execution of the immigration laws.

Records of immigration into the United States have been kept since 1821. These show that the movement from Europe to this country became marked about 1830, and reached large proportions in the two decades from 1840 to 1860. The next

twenty years brought a relatively smaller number of immigrants, followed in the years 1880-1890 by the largest volume in any decade, aggregating over 5,000,000. After another ten years' period of comparative decline, another tidal wave seems to have set in since 1902.[1] In recent years there has been a marked change in the racial elements coming to the United States. Where formerly the bulk of immigrants came from Ireland and the Teutonic countries of central and northern Europe, the greater proportion now come from southern and southeastern Europe, including a large share of Slavonic peoples.

Congressional laws on immigration began with the Passenger acts of 1819 and 1855, which simply aimed to protect immigrants from overcrowding and bad treatment at sea. In 1862 an act was passed restricting the immigration of Chinese coolies; and in 1875 the immigration of convicts and women prostitutes was forbidden. But the first important restrictive measures were two acts of 1882: one prohibiting idiots, lunatics, convicts and persons likely to become a charge on the public from coming into the United States; the other shutting out all Chinese laborers. The enforcement of these acts was given to collectors of customs and to state officers with whom the Secretary of the Treasury might make contracts to act as inspectors. In 1885 alien laborers under contract for employment in this country were forbidden to enter. In 1888 a new and more drastic Chinese exclusion law was passed.

[1] From *Political Science Quarterly*, 19:33.

Decade	Population at beginning of decade	Total number of immigrants	Number per 1000 of initial population
1821-1830.....	9,633,822	143,439	15
1831-1840.....	12,866,020	599,125	47
1841-1850.....	17,069,453	1,713,251	100
1851-1860.....	23,191,876	2,598,224	110
1861-1870.....	31,443,321	2,314,824	73
1871-1880.....	38,558,371	2,812,191	73
1881-1890.....	50,155,783	5,246,613	104
1891-1900.....	62,622,250	3,687,564	59

No effective means of enforcing these restrictions were established until 1891. An act of that year added polygamists and persons suffering from dangerous diseases to the groups of excluded aliens. It also provided for regulating the transportation companies, and required them to carry back any aliens who came to the country in defiance of the law. Further, it provided for a force of national inspectors under a superintendent of immigration. Some amendments have since been enacted, changing the title of the superintendent of immigration and placing the enforcement of the Chinese exclusion acts under his direction.

General supervision of the immigration service is in charge of the officer now known as the commissioner-general of immigration, who is appointed by the President and Senate, at a salary of $5,000 a year. He decides on appeals from the decisions of local inspectors as to the right of aliens to land in the United States; and the courts have held that the provision of the statute which makes his decision final when approved by the Secretary of Commerce and Labor (formerly the Secretary of the Treasury) is valid, and that a writ of *habeas corpus* will not be issued to review the proceedings in the courts.[1] The commissioner-general of immigration also has control over the local inspectors, and prepares regulations (issued by the Secretary of Commerce and Labor) to guide their actions. He also investigates violations of the contract labor law, submits to the United States district attorneys evidence for prosecuting violations, collects immigration statistics and reports annually to the Secretary of Commerce and Labor.

At each of the most important immigrant ports—New York, Boston, Philadelphia, Baltimore and San Francisco, also at Vancouver and Quebec (in winter Halifax) in Canada —there is a local commissioner of immigration with a staff of assistants, inspectors and other subordinates, for examining immigrants and applying the provisions of the laws. The New York immigration office at Ellis island is much the most impor-

[1] 142 U. S. 663; 158 U. S. 546; 185 U. S. 305; 186 U. S. 175.

tant of these local services. There is also a force of immigration inspectors, some stationed at other cities, others traveling throughout the country, who act under the immediate direction of the commissioner-general.

The Bureau of Standards, established in 1901, has custody of the national standards of measurement, makes exact determinations, comparisons and tests of standard units and measuring apparatus, and constructs copies of such standards for use in scientific investigations, engineering, manufacturing, commerce and educational institutions. From the fundamental standards of length and mass, with the unit of time, standards are derived for the measurement of volume, density, capacity, velocity, pressure, energy, electricity, temperature, illumination and the like. The work includes research in the domain of physics, extending into the field of chemistry on the one hand and of engineering on the other; and is carried on by a corps of scientific specialists in mechanical and physical laboratories, under the supervision of the director.

In addition to the investigations begun on its own initiative, the bureau makes comparisons, calibrations, tests and investigations of standards and methods of constructing measuring apparatus for other offices in the national government, and also for state and municipal governments, scientific societies, educational institutions, manufacturers and others. Such work for the national or state governments is performed without charge; from others reasonable fees are required. By furnishing official sealers of weights and measures and private parties with accurate standards of length, mass and capacity, a means is provided for placing the weights and measures used throughout the country on a new basis of uniformity and precision.

CHAPTER XVII

Detached Bureaus

Inter-State Commerce Commission

References.—Dos Passos: The Inter-State Commerce Law.—B. H. Meyer: Railway Legislation in the United States, Part 3.—E. R. Johnson: American Railway Transportation.—*Quarterly Journal of Economics*, 2:162; 3:170.—*Political Science Quarterly*, 2:223, 369; 11:201; 17:394.—*Atlantic Monthly*, 81:433.—*North American Review*, 145:86; 167:543; 168:62, 321, 506.—*Forum*, 11:524; 17:207; 18:704; 25:129; 27:223, 551.—*American Law Review*, 23:84; 29:59; 33:188.—*Popular Science Monthly*, 41:212.

Civil Service Commission

Bryce: American Commonwealth, ch. 65.—Roosevelt: American Ideals, No. 7; Strenuous Life, 41-112; 125-152.—Lodge: Political Essays, 114-137.—Goodnow: Comparative Administrative Law, II, 34-46.—Hart: Practical Essays, No. 4; Actual Government, 285-294.—Reports of the National Civil Service Reform Association.—*Political Science Quarterly*, 3:267; 4:284.—*American Law Review*, 11:197.—*North American Review*, 141:15; 157:571; 161:602; 166:196; 169:678.—*Forum*, 14:216; 16:399; 20:120; 26:413; 27:705; 28:293; 30:608.—*Atlantic Monthly*, 67:252; 71:15; 75:239.—*Scribner's Magazine*, 18:238.—*Century*, 17:628; 18:837. *Conservative Review*, 3:256.

There are in the national administration a number of bureaus, commissions and institutions not attached to any of the nine executive departments thus far considered. These include the Inter-State Commerce Commission, the Civil Service Commission, the Government Printing Office, and the Library of Congress. At least some of these might with advantage be placed under the supervision of one or other of the executive departments; but in their present detached condition they must be noted apart from any of the departments. It must not be supposed, however, that grouping them in this chapter indicates that there is any special relations between

the bureaus here examined. They are as independent of each other as of the executive departments.

INTER-STATE COMMERCE COMMISSION

While the national government early exercised its authority over inter-state commerce in reference to water traffic, and indeed has regulated commerce on inter-state waterways carried on entirely within particular states, the regulation of inter-state railroad commerce has developed only within recent years. The early railroads were built entirely under state authority; and even after companies were established doing business in several states they acted under legislation from each state and without any national authorization. And the early national land grants to encourage railroad building were made to the states; so that in this matter also the national government did not come into direct connection with the railroad companies.

National legislation dealing directly with railroads began with the land grants to the transcontinental roads during the Civil War. Then in 1866 an Act of Congress was passed permitting the formation of inter-state freight lines. In 1868 and 1873-4, congressional committees investigated railroad questions and considered the question of national control; but no legislation was enacted. In 1875 an act was passed providing for the collection of railroad statistics; but it was twelve years later before any regulation of the railroad business was attempted.

The Inter-State Commerce Act of 1887 was a compromise between two bills, one of which had passed each house of Congress. This act imposed certain requirements and prohibitions on inter-state railroad traffic; and established a commission with power to investigate complaints, to institute inquiries, and to carry on proceedings for the enforcement of the provisions of the law. The powers of the commission have been somewhat enlarged by subsequent legislation, notably the Safety Appliances Act of 1893, the Arbitration Act of 1898,

the Railroad Accidents Act of 1901, and the act of 1903 prohibiting rebates.

There are five members of the commission, appointed by the President and Senate for a term of six years, at a salary of $7,500 each. It employs a secretary and a statistician and a considerable staff of clerks. Its functions are in part administrative, and in part quasi-judicial, and this dual nature has been the cause of no little dissatisfaction.

In its administrative capacity the commission has charge of the collection of railroad statistics; and in this field it has secured the adoption of uniform methods of accounting by the various railroads, and collects and publishes tolerably complete returns of railroad finances, railroad traffic and railroad accidents. It has also brought about greater uniformity in the methods of classifying freight, the former manifold classifications being now reduced to three, each in use in a definite section of the country. It has further promoted the adoption of safety appliances and methods for the prevention of accidents; but as yet the requirements for railroads in this regard are much less than for vessel navigation under the steamboat inspection service.

Most attention, however, has been given to the quasi-judicial work of the commission in investigating complaints of violations of the provisions of the law intended to secure an adherence to the old common law doctrine that common carriers must treat all their patrons equally, and to prevent local discriminations and unreasonable rates. The statutes require the railroads to publish their tariffs of rates, and prohibit pooling of business and rebates and discriminations in favor of particular shippers. They also establish the general rule that rates for a short distance must not exceed those for a longer distance over the same line; but allows the commission to allow exceptions to this rule in special cases where it seems necessary.

In dealing with complaints under these sections of the law, the commission has adopted the forms of a judicial trial, in

which the complainants and the defendant railroads appear with counsel. And their decisions, published in a regular series of reports, constitute now a considerable body of railway law, much of which is clearly established and recognized. But obstacles have been encountered, which have prevented the commission from accomplishing much that it has wished to do. For a time witnesses refused to testify before the commission, under the constitutional guarantee which prevents anyone from being forced to incriminate himself. But this difficulty was removed by an act of 1896, which relieves witnesses from prosecution for any crime shown by their testimony, thus making it easier for the commission to get evidence against the railroad companies, by waiving the right of prosecution against their agents. A more serious obstacle to the devices of the commission is the fact that it has no power to execute its decisions; that the cases may be again tried in the courts, where new evidence may be presented and entirely different decisions secured. In particular the Supreme Court has limited the commission's power over unreasonable rates, by holding that even where it finds a rate complained of to be unreasonable, it cannot declare what will be a reasonable rate for the future.[1]

Even if the commission were given authority to name reasonable rates, it is evident from the decisions of the Supreme Court in reference to rates established by state authorities, that an appeal could be taken from its decisions to the courts.[2] In view of these and other considerations it would seem to be advisable that the commission should be reorganized on more distinctively administrative lines. A single commissioner, with an adequate staff, could more effectively organize the work of investigation and make determinations more rapidly. Appeals from such decisions to the courts are to be expected under any organization or procedure of the administrative authority; and the existing arrangement of two inquiries under

[1] 167 U. S. 479.
[2] 164 U. S. 403, 578.

judicial forms increases the delay in final settlement. Delays in the courts can be reduced by increasing the number of judges.

CIVIL SERVICE COMMISSION

Entrance to subordinate positions in the national administration is now in large measure regulated by the Civil Service Commission, which also has important powers to prevent abuses in the administrative service. To understand the purposes and methods of the commission, it is necessary to note former conditions, and to trace the development of measures for improvement.

Appointments to subordinate positions have been made from the beginning of the national government by the heads of departments, in most cases on the nomination of chiefs of bureaus or the principal local officials under whom the persons employed perform their duties. But the recommendations of members of Congress early became an important factor in securing positions; and with the development of party organization the influence of party managers came to be of great weight, especially in districts where the local member of Congress was not in political accord with the President.

From the beginning there has been no definite term for such subordinate positions; but they are held subject to the removal power of the appointing authority. There is no exact record of removals of employees; but it seems clear that at first the tenure in all cases was practically one of good behavior. The political removals from presidential offices by Jefferson was probably followed by removals of the same kind from minor posts. More certainly there were large numbers of political removals throughout the administrative service when Jackson became President in 1829. The total number in the first year of Jackson's term has been estimated at 2,000,[1] out of 25,000 positions then under the national government. From this time, with the development of political removals from presi-

[1] Senator Holmes in the Senate, April 28, 1830.

dential offices, the same custom came to be more and more systematically followed for all grades of employees. It seems probable that removals from minor posts were always less in proportion than from the higher offices. But enough was done to disorganize and demoralize many branches of the administration with every party change in the presidency; and a good deal in the same direction at every new administration.

A small step towards better conditions was taken in 1853, when the clerks in the department offices at Washington with salaries from $1,300 to $1,800 were grouped into four classes; and it was provided that persons appointed to this "classified service" should be required to take a pass examination conducted by examining boards in each department. These examinations were, however, limited to those previously selected for positions; and often had no relation either to the candidates' ability in general or their qualifications for particular posts.

In 1864 provision was made for a small force of consular clerks appointed after examinations. After this time various attempts were made in Congress to secure the establishment of a permanent commission to control admission to the administrative service. President Grant supported this plan; and in 1871 an act was passed authorizing the President to appoint a commission for this purpose.

The commission, of which George William Curtis was chairman, framed rules based on the principle of competitive examinations open to all applicants. But in two years the appropriation for the commission was defeated in Congress; and the new system had to be given up for the time. It was, however, established in a few of the largest local offices, such as the custom house and post-office in New York; and also, after 1877, in the department of the Interior by Secretary Carl Schurz.

On the assassination of President Garfield by a disappointed office seeker, public opinion was aroused against the prevailing method of patronage appointments. But it was not until

nearly two years later, in 1883, that an act was finally passed which forms the basis for the present system.

This act was similar to that of 1871. It did not directly restrict removals, nor did it of itself establish a new system of controlling appointments. It provided for a commission of three persons, not more than two of the same political party, to be appointed by the President and Senate. This commission was to frame rules regulating admission to positions in the classified service, which should become effective when promulgated by the President. The act also provided that the rules should require competitive examinations and probationary appointments, to test the capacity and fitness of candidates, but with a preference for members of the army and navy disabled in the service. It also prohibited recommendations from members of Congress; required appointments to be apportioned to the states and territories on the basis of population; and restricted the levy of political assessments from government officials and employees.

Under the rules first adopted competitive examinations were required for new appointments to some 14,000 positions in the department offices at Washington and the larger custom houses and post-offices. Since then the number of competitive places has been steadily increased, partly by the growth of the government service, partly by new rules extending the competitive system to new classes of positions.[1] The most notable increase

[1] DEVELOPMENT OF THE COMPETITIVE CLASSIFIED SERVICE

Period	President	Number of competitive positions at end of period	Number examined	Number passed	Number appointed
July 16, 1883-January 15,1885.	Arthur...	15,590	9,889	6,185	2,289
January 15, 1885-June 30, 1889	Cleveland.	29,650	53,795	34,626	12,720
June 30, 1889-June 30, 1893...	Harrison.	43,915	86,366	52,901	18,829
June 30, 1893-June 30, 1897...	Cleveland	85,886	150,165	92,130	17,630
June 30, 1897-June 30, 1901...	McKinley.	106,205	189,571	135,398	37,607
June 30, 1901-June 30, 1904...	Roosevelt.	135,482	298,233	228,570	101,861

The marked increase in appointments in the last period is due in large part to the inclusion of appointments of laborers under the navy yard

was that made by the "blanket order" of President Cleveland in May, 1896. President Roosevelt, who was a member of the commission for six years, has made important extensions and has greatly strengthened the merit system by other changes in the regulations.

In 1904 there were 135,000 positions subject to competitive examinations, out of 280,000 positions in the executive civil service. The salaries for the competitive positions aggregate about two-thirds of the total expenditure of $180,000,000 for salaries. The non-competitive positions include the presidential offices, certain minor offices,[1] employees whose duties are of an important, confidential or fiduciary nature,[2] the 70,000 fourth class postmasters, and laborers.

The classified service is divided into seven main groups: the departmental service, the custom house service, the post-office service, the railway mail service, the Indian service, the internal revenue service, and the government printing service. The departmental and post-office services each include more than forty per cent. of the total number of competitive positions; while the other five divisions together have less than twenty per cent. The Civil Service Commission also groups the positions into eleven classes on the basis of salary. About one-third of those in the classified service receive less than $720 a year; another third from $720 to $1,200; and the remainder over $1,200. In 1903 there were 1,428 positions (including presidential offices) with a salary of $2,500 or more.[3]

Examinations of applicants for positions are held in every state and territory at least twice a year under the direction of the Chief Examiner of the Commission. Local boards of examiners have been selected from the government employees at

regulations and appointments to the rapidly developing rural delivery service.

[1] Attorneys, pension surgeons and deputy marshals.

[2] Also employees at post offices not having free delivery and Indians in the Indian service.

[3] Census Report on the Executive Service, Bulletin 12, p. 36.

each of the places where examinations were held; but since 1902 it has been the policy of the commission to consolidate local boards in neighboring places and to establish civil service districts, conducting all the examinations in each district from a central point.

There are hundreds of different examinations for the great variety of positions; but these may be grouped into three principal classes. For a considerable proportion of positions, such as janitors, firemen, apprentices, messengers, watchmen and the like, the examinations simply cover physical qualifications and experience, with no educational test. And as this class of employees change very frequently, nearly half of the new appointments each year are to such positions. The largest class of positions are those of a clerical nature, where the examinations require a good common school education, and sometimes—for such places as stenographers, typewriters and bookkeepers—technical training of a simple kind. More than half of the new appointments are to such positions. The third group consists of professional, scientific and technical positions, requiring a high degree of specialized training. This includes patent examiners, engineers, law clerks, and experts in many other lines. Not more than a tenth of the positions in the classified service are in this group; and the new appointments are a much smaller proportion. Examinations for this class of positions cover the technical qualifications, training and experience, and for some of the highest posts the latter are the most important parts of the examination.

Eligible lists of candidates who have passed the examination for each kind of position are prepared, with disabled veterans ranking first, and others in the order of their grades on the examinations. Vacancies are filled by the selection of the appointing officer from the three persons standing highest on the appropriate register, subject to the rules for the geographical apportionment of appointments. When a name has been passed three times it is dropped from the eligible list. Appointments are made first for a probationary period of six

months; and at the end of that time the probationer is either removed or receives a permanent appointment.

For a time the rules governing the entrance to the service were evaded by the system of transfers from one office to another. Before a particular class of positions was brought under the competitive system, many political appointments would be made, in excess of the number of employees required. After the places were brought under the competitive rules, the additional appointees would be transferred to other competitive positions. Under the present rules, however, transfers are carefully regulated.

Promotions are now governed by regulations for each branch of the civil service. These regulations provide for further examinations; but also consider the records of efficiency of the candidates, and in some cases seniority of service is given weight.

In the earliest rules the only restriction in removals was a vague provision that they should not be made for political or religious opinions; and no method was provided for enforcing this. President McKinley in 1897 established a rule that no removals should be made from the competitive service except for just cause and for reasons stated in writing, with notice given before removal. President Roosevelt supplemented this in 1902 with an explanatory statement that "just cause" meant any cause not merely political or religious, which will promote the efficiency of the service; and that employees were not guaranteed a trial before removal.

With the new system of appointments, which removes the incentive to removals for the purpose of creating a vacancy for a patronage appointment, there has been a great reduction in the number of removals. Complete records are not available; but in the railway mail service, where the removals almost equalled the whole number of employees between 1885 and 1889, there have been only two per cent. a year since the service has been made competitive.

GOVERNMENT PRINTING OFFICE

Probably the largest printing and binding establishment in the world is the United States Government Printing Office. This does all the printing and binding, not only for every branch of the national administration, but also for both houses of Congress and for the national judiciary, except that done by the Bureau of Engraving and Printing in the department of the Treasury. This includes the Congressional Record, published daily during the sessions of Congress, with a stenographic report of the debates and proceedings; the reports of the various administrative bureaus and departments, which are also republished with the reports of committees of Congress in the series of Congressional documents; the decisions and opinions of the United States courts; and the great variety of blank forms and other stationery for the different government offices. Several thousand persons are employed, and the expenditures now exceed $6,000,000 a year. There is no doubt that this is an extravagant outlay. There is no effective means of limiting the amount of printing; and a great deal of useless material is published.

In general charge of the printing office is the Public Printer. He appoints, under the rules of the Civil Service Commission, the officers and employees, and purchases the necessary machinery and material. But he has no control over what may be printed or how many copies of each document. Under his direction the principal officers are a chief clerk, who has general supervision of the clerical force, a foreman of printing and a foreman of binding. There is also a Superintendent of Documents, who prepares an index to the public documents, and has charge of their distribution and sale, except those assigned to the members of Congress and to the various administrative departments and bureaus.

LIBRARY OF CONGRESS[1]

While its name and its early history indicate that the Library

[1] Report of the Librarian of Congress, 1901, Pt. 2.

of Congress is simply a collection of books for the use of the legislative branch of the national government, its organization and functions at the present time make it in fact a national library and a part of the national administration.

The beginning of the library dates from 1800. In connection with the removal of the national government to Washington, provision was made for the purchase of books to be kept in the Capitol for the use of the members of Congress. This collection had increased to 3,000 volumes when it was destroyed in the burning of the Capitol in 1814. A new start was made by the purchase of the library of ex-President Jefferson. This increased gradually, mainly by purchases, to 55,000 volumes in 1851, when two-thirds of the collection was lost by another fire.

Since then the library has developed much more rapidly. Appropriations were made by Congress from time to time to make specific purchases. After 1846 a copy of each book copyrighted in the United States was required to be deposited with the library. A system of international exchanges of public documents was established. In 1866 the library of the Smithsonian Institution was transferred to the library of Congress. And a number of important private collections were presented to the library.

While the number of volumes was thus increasing no adequate provisions were made for the library in other respects. The rooms in the Capitol were overcrowded. The classification, arrangement and cataloguing of the books was very incomplete, and accommodations for using the library were unsatisfactory. In 1886 Congress authorized the construction of a new library building, which was completed in 1897 at a cost of $6,932,000. This is the largest and most magnificent library building in the world. It occupies a space of nearly four acres on a site of ten acres near the Capitol; it can house 2,500,000 volumes, and contains now 1,281,000 printed books and pamphlets, besides manuscripts, maps, music, photographs and engravings.

With the transfer to the new building there have come

important developments in the library administration. Large additions have been made to the staff, which now numbers over 400. Regular appropriations are made by Congress for the purchase of periodicals and foreign books. The principal reading rooms are open to the public both day and evening; and special accommodations are furnished to those engaged in research investigations. The whole collection is being recatalogued; and in connection with this the library has undertaken to sell printed catalogue cards to libraries in all parts of the country.

From the beginning the Librarian has been appointed by the President of the United States. Until 1814 the Clerk of the House of Representatives was designated. Since then there have been six librarians, one serving for 32 years (John S. Meehan, 1829-1861) and another for 33 years (A. R. Spofford, 1864-1897). The Librarian makes appointments to the library service and has general supervision over the library administration. Other general officers are the chief assistant librarian, the chief clerk and the Librarian's secretary.

The library staff is classified into a number of divisions, which may be grouped as follows: (1) those having to do with the acquisition of material and its preparation for use,—orders, cataloguing and bibliography, with which is connected a branch of the Government Printing Office; (2) those having the custody of material in use,—the reading room, periodicals, documents, manuscripts, maps, music and prints; (3) the Law Library, which still remains at the Capitol, and (4) the copyright office.

A national copyright law was enacted in 1790; but it was not until 1870 that the Librarian of Congress was given control over copyright records. All articles copyrighted must be registered with the Register of Copyrights; and at least one copy (of most articles two copies) must be deposited in the Library of Congress. There is no investigation of claims as in the Patent Office; and a copyright is simply a matter of record and is not a guarantee of literary or artistic property. By act

of 1891 foreign authors may obtain copyright in the United States upon the same terms as American authors.

A superintendent of the library building and grounds is also appointed by the President and Senate, and appoints and has supervision over the watch, engineer and janitor force.

In conclusion it remains to note briefly a number of institutions which have some official relations to the national administration.

The International Bureau of American Republics was established in 1890 and reorganized in 1901, for the purpose of developing closer relations between the republics in North and South America. It has custody of the archives of the International American Congresses, corresponds through diplomatic agents with the executive branches of the American republics, and publishes a monthly bulletin of commercial information about American countries. It is supported by contributions from the American republics in proportion to their population.

The National Home for Disabled Volunteer Soldiers maintains ten institutions for the care of such soldiers in different parts of the country. The President of the United States, the Chief Justice of the Supreme Court and the Secretary of War are *ex-officiis* members of the Board of Managers.

The Smithsonian Institution[1] originated from a bequest of James Smithson, an English scientist, who on his death in 1829 left his entire estate (which has amounted to three quarters of a million dollars) to the United States to found "an establishment for the increase and diffusion of knowledge among men." The new institution was not definitely organized until 1846. It has published the results of many scientific investigations, and has carried on important scientific experiments. It has established a national museum, the foremost collection in the world in the natural history, ethnology, geology and paleontology of the territory now included in the United States.

[1] *Popular Science Monthly*, vol. 62, p. 323.

The American Historical Association presents the annual reports of its proceedings to the Smithsonian Institution, and thus secures their publication as Congressional documents. Attached to the institution are several bureaus supported by the national government,—the bureau of American Ethnology, the astrophysical observatory and the national zoölogical park. For the support of these about $500,000 is appropriated each year, in addition to the private income of the institution, which amounts to about $60,000.

In the act establishing the institution it is provided that the President and his cabinet shall be members of the institution. The governing body is a board of regents, composed of the Vice-President of the United States, the Chief Justice of the Supreme Court, three United States Senators, three members of the House of Representatives, and six others selected by Congress. The chief executive officer is the secretary,—who is a permanent official, the present secretary being the third since the establishment of the institution. All of the officers are selected for their qualifications as scientific students; and political reasons have never been considered in their appointment.

CASES CITED

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LIBRARY OF CONGRESS
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